



Staff Report

File #: 22-76

Version: 1

Date: 3/28/2022

Item #: 4. d.

TO: Mayor and City Council

THROUGH: Kristen Retherford, Interim City Manager

FROM: Norman Wright, Community Development Director

SUBJECT:

Appeal of the Planning Commission's decision approving Comprehensive Plan Map Designation and Zone change to Commercial and (CR) Retail Commercial zoning for property located at the southwest corner of the intersection for Kuebler Boulevard and I-5.

Ward(s): Ward 4

Councilor(s): Leung

Neighborhood(s): South Gateway Neighborhood Association

Result Area(s): Welcoming and Livable Community

SUMMARY:

On February 3, 2022, the Planning Commission issued a decision approving a request to change the 24.66-acres subject property from RA (Residential Agriculture) to CR (Retail Commercial), subject to conditions of approval. (**Attachment 1**).

The South Gateway Neighborhood Association filed an appeal on February 7, 2022 (**Attachment 2**).

ISSUE:

Shall the City Council affirm, amend, or reverse the Planning Commission's decision for Comprehensive Plan Map Designation and Zone change, Case No. CPC-ZC21-04?

RECOMMENDATION:

Staff recommends that the City Council reverse the Planning Commission's decision for Comprehensive Plan Map Designation and Zone change, Case No. CPC-ZC21-04 and deny the application.

FACTS AND FINDINGS:

Procedural Findings

1. On August 25, 2021, an application was filed for a Comprehensive Plan Map Amendment and Quasi-Judicial Zone Change by Mark Shipman of Saalfeld Griggs PC, on behalf of Boone Road Commercial LLC, to change the 24.66-acres subject property from RA (Residential Agriculture) to CR (Retail Commercial).
2. On June 10, 2021, the applicant's representative attended the South Gateway Neighborhood Association meeting, held virtually, to present their proposal, meeting the open house requirements of SRC 300.320.
3. The consolidated application was deemed complete for processing on September 23, 2021, and a public hearing to consider the application was scheduled for November 2, 2021. On September 24, 2021, notice was sent pursuant to ORS 197.610 and SRC 300.620(b)(1) to Oregon Department of Land Conservation and Development (DLCD). On October 13, 2021, notice of the consolidated application was provided to surrounding property owners, tenants and Neighborhood Associations, pursuant to Salem Revised Code (SRC) requirements.
4. On February 1, 2022, after conducting a public hearing on November 2, 2021, November 16, 2021, and December 21, 2021, the Planning Commission voted to approve the applications with conditions.
5. On January 25, 2022, the Planning Commission considered an Order with attached Facts and Findings prepared by staff. The applicant submitted an objection to the proposed Facts and Findings. The Commission voted to open the written record to review the applicant's objections to the written findings.
6. On February 1, 2022, the Planning Commission voted to approve the Order and Facts and Findings prepared by staff after reviewing all evidence submitted into the record.
7. On February 7, 2022, the South Gateway Neighborhood Association filed an appeal. A hearing was scheduled before the City Council on March 28, 2022.
5. On March 8, 2022, notice of the hearing was sent to the South Gateway Neighborhood Association and surrounding property owners and tenants pursuant to Salem Revised Code requirements. Notice of the hearing was posted on the subject property on March 14, 2022.
6. Applicant submittals for case number CPC-ZC21-04, including the Transportation Planning Rule Analysis, all evidence and testimony submitted into the record can be found [here](https://www.cityofsalem.net/Pages/proposed-comprehensive-plan-and-zone-change-near-) <https://www.cityofsalem.net/Pages/proposed-comprehensive-plan-and-zone-change-near->.
7. Pursuant to Oregon Revised Statutes (ORS) 227.128, amendments to an acknowledged Comprehensive Plan are not subject to the 120-day rule. Pursuant to ORS 227.178(10), the

additional applications have been filed concurrently, are being considered jointly with the proposed comprehensive plan amendment and are not subject to the 120-day rule.

Substantive Findings

The applicant is proposing a commercial retail development consisting of office, hotel, retail and housing, as shown in their conceptual plan (found as Attachment E of staff report November 2, 2021).

1. Impact to the Transportation System and Transportation Rule Analysis

A Transportation Planning Rule Analysis (TPR) is required for any change to the City's Comprehensive Plan Map. The analysis starts with reviewing the adopted Transportation Systems Plan, which is part of the Comprehensive Plan. The plan takes in to account all relevant modes of transportation: automobile, mass transit, air, water, rail, highway, bicycle and pedestrian travel within the city. It also includes an expected traffic generation for every undeveloped property, based on the current Comprehensive Plan designation, which is in this case is Developing Residential.

Secondly, an applicant must look at the amount of traffic to be generated from the proposed designation, which in this case is Commercial. The TPR Analysis must demonstrate that the proposed Comprehensive Plan Amendment and Zone Change will not result in an increase in trip generation from the site over the existing designation and zoning in the Forecast Year of the Transportation Systems Plan. If the proposal results in an increase in trip generation over the existing designation and zoning, a Traffic Impact Analysis (TIA) is required to determine if the proposal will adversely impact the overall transportation system. If there is an adverse impact, the TIA will provide recommended mitigation to restore traffic operations to accepted levels as defined in the City's Administrative Rules, Chapter 109, Division 006, Street Design Standards, Section 6.32 Traffic Impact Analysis (TIA) and must comply with the State Transportation Planning Rule (TPR) OAR 660-012-0060.

The applicant has provided testimony that the proposed Commercial designation and Commercial Retail zoning will not degrade the transportation system. Staff analysis of traffic concerns, errors and lack of mitigation are on pages 13-15 and 20-21 of the Planning Commission Staff Report dated November 2, 2021 (**Attachment 4**), and within the Planning Commission supplemental Staff Report dated December 21, 2021 (**Attachment 5**). Several additional concerns with the data and testimony have been identified by the City Traffic Engineer.

The applicant has stated that all impacts will be mitigated with the conditions of approval, as listed in the Planning Commission decision (**Attachment 3**). Staff continues to have concerns and do not believe there is adequate evidence to approve the application. During the Planning Commission Hearings, the applicant relied heavily on Tables 9 and 10 of the applicant's TIA where the applicant indicates that the proposed TPR requirements are satisfied by the mitigation proposed in the TIA. The City Traffic Engineer disagrees based on discrepancies with this data, as follows:

- The intersection of Kuebler Boulevard and Commercial Street does not need mitigation

due to a minimal increase of Volume-to-Capacity Ratio (v/c). The applicant's study based this assumption on a standard that applies to State Highways and not City of Salem streets. The Oregon Highway Plan, Action 1F.5 says increases in volume-to-capacity (v/c) ratios of 0.03 or less are not considered to be a "significant affect" to traffic operations on a State Highway. The City of Salem has not adopted this standard. For quasi-judicial land use actions, any increase in v/c ratios above adopted operating standards (v/c greater than 0.90) is considered a traffic impact.

- A Traffic Impact Analysis reviews a variety of items, some being Volume to Capacity (v/c), Level of Service (LOS) and delay (in seconds) which all measure of traffic operations. Generally, as traffic is added to the transportation system, all of these measures increase. However, the applicant's TIA shows an inconsistency in the data where two of these measures increase and one decreases. The applicant's TIA shows that the intersection of Kuebler Boulevard and Battle Creek Road will have an increase in delay (from 77.6 second to 91.0 second) and have a Level of Service (LOS) from 'E' to 'F' between their project impacts and impacts after their proposed mitigation. However, they show the Volume-to Capacity (v/c) decrease from 1.58 after project to 1.14 after mitigation. The inconsistency raises concerns on whether the applicant meets the decision criteria.
- For the intersection of Kuebler Boulevard and 36th Avenue, the applicant's TIA shows a traffic impact, but the applicant is only proposing a share of cost towards a future construction project to mitigate their traffic impacts. The applicant paying a portion towards the improvement does not meet the criterion of OAR Chapter 660, Division 12-0060 (3)(b): "Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportations improvements or measures.". The applicant's proposal is to contribute money toward the improvement, which is not constructing the improvement, which is needed to mitigate the impacts of the amendment, therefore not meeting the decision criteria. The project to improve Kuebler Boulevard at 36th Avenue would not be constructed for many years. The applicant's proposal is to contribute money toward the improvement, which is not constructing the improvement, which is needed to mitigate the impacts of the amendment, therefore not meeting the decision criteria.

In this case, the applicant's traffic engineer and staff discussed following the same scope used for the Costco development. The Costco TIA included *weekend traffic* in both the 2006 version and the 2018 version. The applicant's TIA for this project does not. City of Salem Administration Rules - Design Standards, Division 006, Section 6.33 states that the City Traffic Engineer determines which peak hours are required for the study. That can include weekend peak hours depending on the development type, traffic generation, peak hour character of the development, and peak hour of the adjacent roadway. The peak traffic volumes for commercial

retail development typically occurs on the weekend. Therefore, most of the proposed development traffic will be focused to the existing round-about on 27th Avenue and a large amount of Costco's traffic is also focused onto the round-about on 27th Avenue. The weekend traffic impacts must be analyzed to provide an accurate picture of the impacts to the transportation system.

Staff has expressed concern about the round-about on 27th Avenue with the applicant and Planning Commission. There is a high likelihood that the round-about will have such high vehicle queues backing up from the traffic signal at Kuebler Boulevard that traffic will likely back up into the round-about and will not distribute traffic as designed.

The existing round-about on 27th Avenue is approximately 400 ft from the intersection. This short spacing distance raises concern about the operation and traffic at the 27th Avenue round-about especially since the Costco property has several means in ingress and egress (direct access to Kuebler Boulevard, 27th Avenue, and Boone Road), whereas the subject property only has access to the round-about at 27th Avenue and Boone Road.

Staff does not believe the applicant has met their burden of proof addressing the decision criteria, specifically that the transportation system will not be degraded with the proposed Comprehensive Plan Change and Zone Change.

2. Planning Commission's Decision

The Planning Commission approved the application with several conditions:

Condition 1: The subject property shall not contain more than three uses with drive through.

Condition 2: The subject property shall have no single retail store building that is constructed with more than 70,000 sq. ft.

Condition 3: Mitigation as detailed in the Transportation Planning Rule analysis shall be completed as follows:

- Battle Creek Road SE at Kuebler Boulevard SE -
 - Construct a second southbound left turn lane on the Battle Creek Road SE approach.
- 27th Avenue SE at Kuebler Boulevard SE -
 - Construct a second northbound right turn lane on 27th Avenue SE. The additional right turn lane shall extend from the site at the roundabout to the intersection with Kuebler. The signal shall be modified to accommodate the right turn lanes and splitter island.
 - Construct a second northbound left turn lane on 27th Avenue SE. The additional left turn land shall extend from the roundabout to the intersection with Kuebler Boulevard SE. The signal shall be modified to accommodate the two left turn lanes.

- Extend the westbound left turn lanes on Kuebler Boulevard to provide 600 feet of vehicle queueing in each lane.
- Additional widening, improvements, and signal modifications will be required on the north leg of 27th Avenue to ensure proper lane alignment and safe operation at the intersection.
- 36th Avenue SE at Kuebler Boulevard SE -
 - Construct a westbound right turn lane on Kuebler Boulevard SE at the intersection with 36th Avenue SE. The right turn lane shall provide for 100 feet of vehicle storage. Modify the traffic signal as required to construct the improvements.

The Planning Commission found that the applicant's testimony was more compelling than the analysis provided by staff and found that the applicant met the burden of proof and, with the conditions of approval, satisfied the approval criteria.

3. South Gateway Neighborhood Association Appeal

The Neighborhood Association's appeal application and supporting documentation are included as **Attachment 2**. The appeal raises the following issues:

Not Consistent with *Our Salem*:

The proposal is not consistent with the City of Salem's effort to update the Comprehensive Plan and Zoning to Commercial Office (CO) as part of *Our Salem*.

Staff Response: The 'Our Salem' proposed Comprehensive designation is Commercial, as shown in Attachment A. The corresponding zoning proposed by the *Our Salem* project is CO (Commercial Office).

The difference between the applicant's proposal of CR (Retail Commercial) and the *Our Salem* proposed CO (Commercial Office), is the amount of retail sales allowed. The applicant's proposed zone allows all types of retail sales, where the Commercial Office zone only allows newsstands, caterers, and retail sales of agricultural products with a 1,000 square footage building limit. The zone proposed by *Our Salem* generally allows office and professional services, along with a mix of housing and limited retail and personal services, where the applicant's proposal allows a wide array of retail sales and office uses. Commercial Office was selected by City staff in the *Our Salem* proposal as a recognition of the location of the subject property (along a parkway and adjacent to a freeway interchange) while seeking to minimize the transportation impacts that result from commercial retail uses. The 'Our Salem' staff recommendations in *Our Salem* are not binding on City Council; the changes are subject to City Council approval.

Mixed Use zoning preferred:

The applicant attended the Neighborhood Meeting and discussed a mix of uses, including offices, restaurants, and housing. The applicant's requested Commercial Retail (CR)

zoning would allow for more intense uses than the Mixed-Use zones. The mixed-use zones are more appropriate in the area due to residential neighborhoods and church properties in the area.

Staff Response: The applicant is not proposing Mixed-Use I or Mixed-Use II as part of their application, therefore staff has not fully evaluated the Mixed-Use zones. The proposed CR (Retail Commercial) zone does allow for more intense retail sales uses than the Mixed-Use or Commercial Office zones. Those more intense uses generally create traffic during the same parts of the day and/or week as surrounding retail uses. Staff agrees that uses allowed in the Mixed-Use zones or Commercial Office zones would be generally less traffic and have off-set timing from those intense retail uses, such as Costco across the street.

Traffic Concerns:

The potential traffic problems would be caused by rezoning the property to CR, especially with the addition of traffic from Costco across the street from the subject property. Addition of a shopping center will create more traffic problems and is undesirable on the property.

Staff Response: The proposal would generate 20,000 trips to and from the site; 12,000 trips are new (people making a trip specifically to the site) and 8,000 diverted trips (people stopping by the site on their way to another destination). The applicant submitted a TIA that analyzed the traffic impacts the development will have on the surrounding street system. The TIA proposed street improvements to mitigate the impacts of the change; the Planning Commission's approval requires the applicant to build that mitigation.

4. Other Comments Received from South Gateway Neighborhood Association, Morningside Neighborhood Association and the Public.

The Planning Commission decision addressed six comments from citizens, two from the South Gateway Neighborhood Association (SGNA) and one comment from Morningside Neighborhood Development Organization (Morningside) which were submitted in opposition. Comments raised issues related to incompatibility of the zone change, and increased traffic. These comments (**Attachment 6**) and Planning Commission responses are included in the Planning Commission's decision (**Attachment 3**).

ALTERNATIVES:

The City Council may affirm, modify, or reverse the decision of the Planning Commission for Comprehensive Plan Map Designation and Zone Change, Case No. CPC-ZC21-04.

- I. **AFFIRM** the decision;
- II. **MODIFY** the decision; or
- III. **REVERSE** the decision.

Olivia Dias

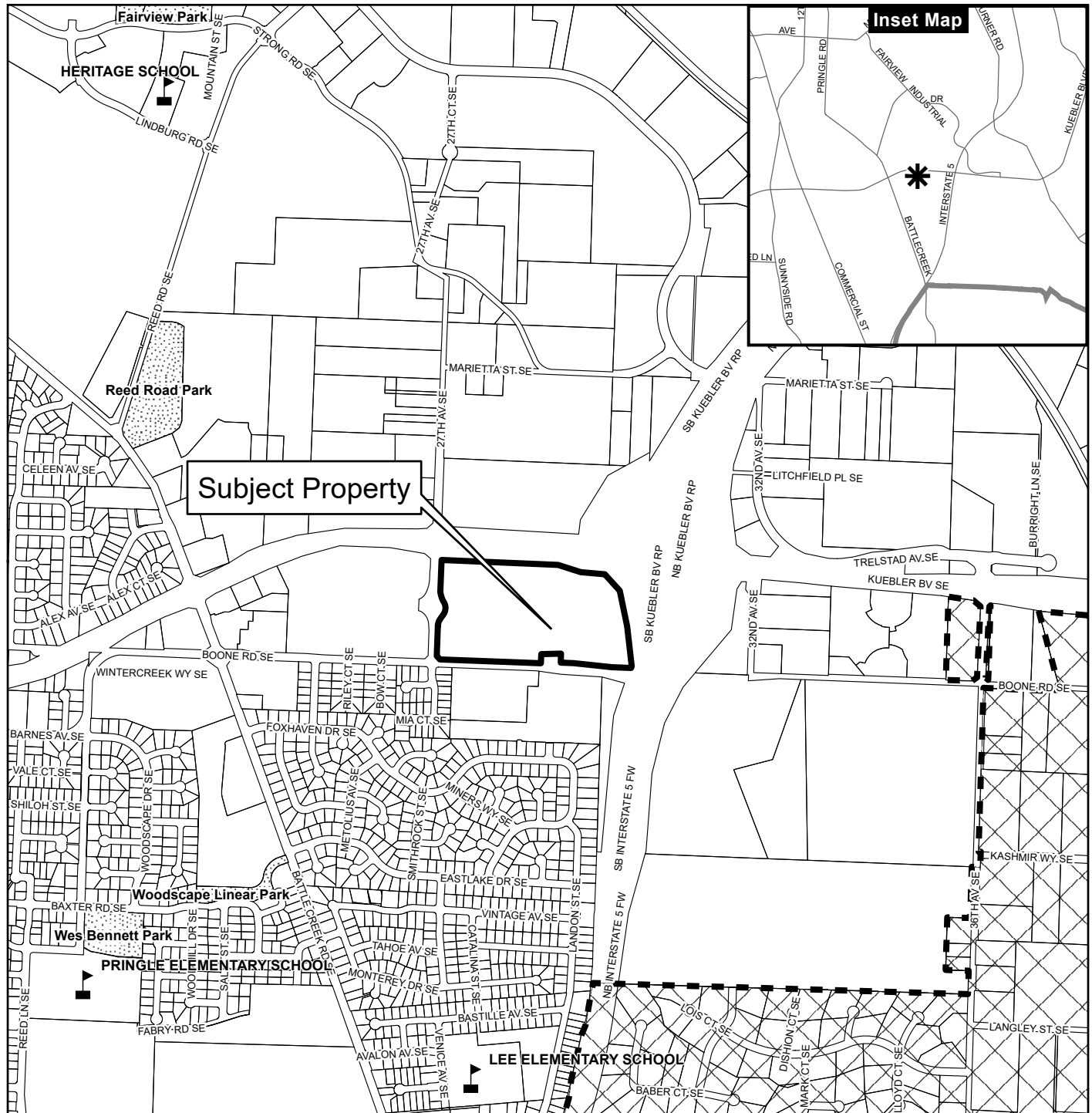
Current Planning Manager

Attachments:

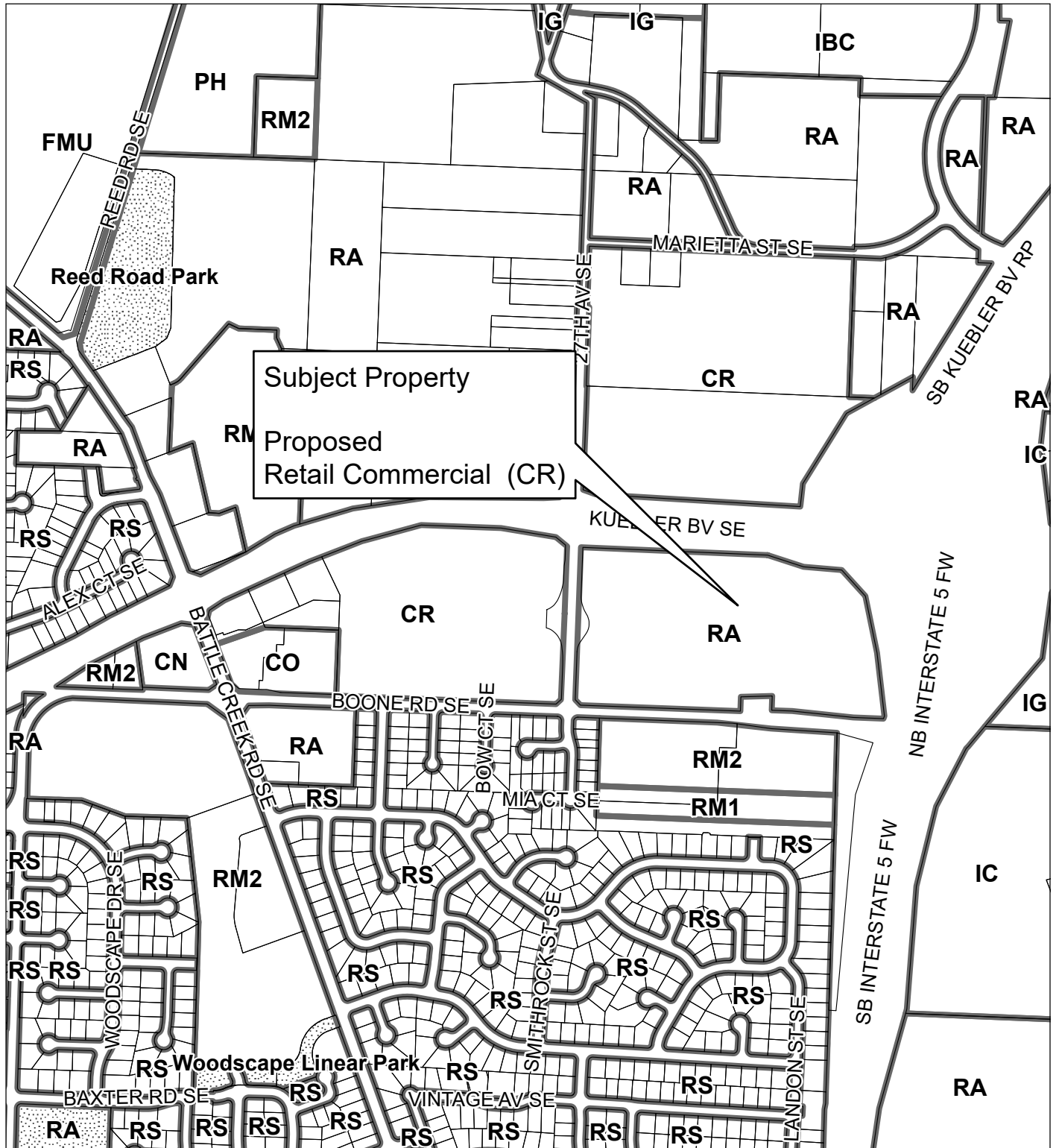
1. Vicinity Maps
2. South Gateway Neighborhood Association appeal
3. Planning Commission's Decision for Case No. CPC-ZC21-04
4. Staff Report to Planning Commission dated November 2, 2021
5. Supplemental Staff Report to Planning Commission dated December 21, 2012
6. Public Comments submitted prior to February 3, 2022
7. Public Comments submitted prior to March 21, 2022

Vicinity Map

2900 Block Kuebler BLVD SE



PROPOSED ZONING MAP CHANGE



Legend

- | | |
|---------------------------|---------|
| Base Zoning | Taxlots |
| Urban Growth Boundary | Parks |
| Outside Salem City Limits | Schools |

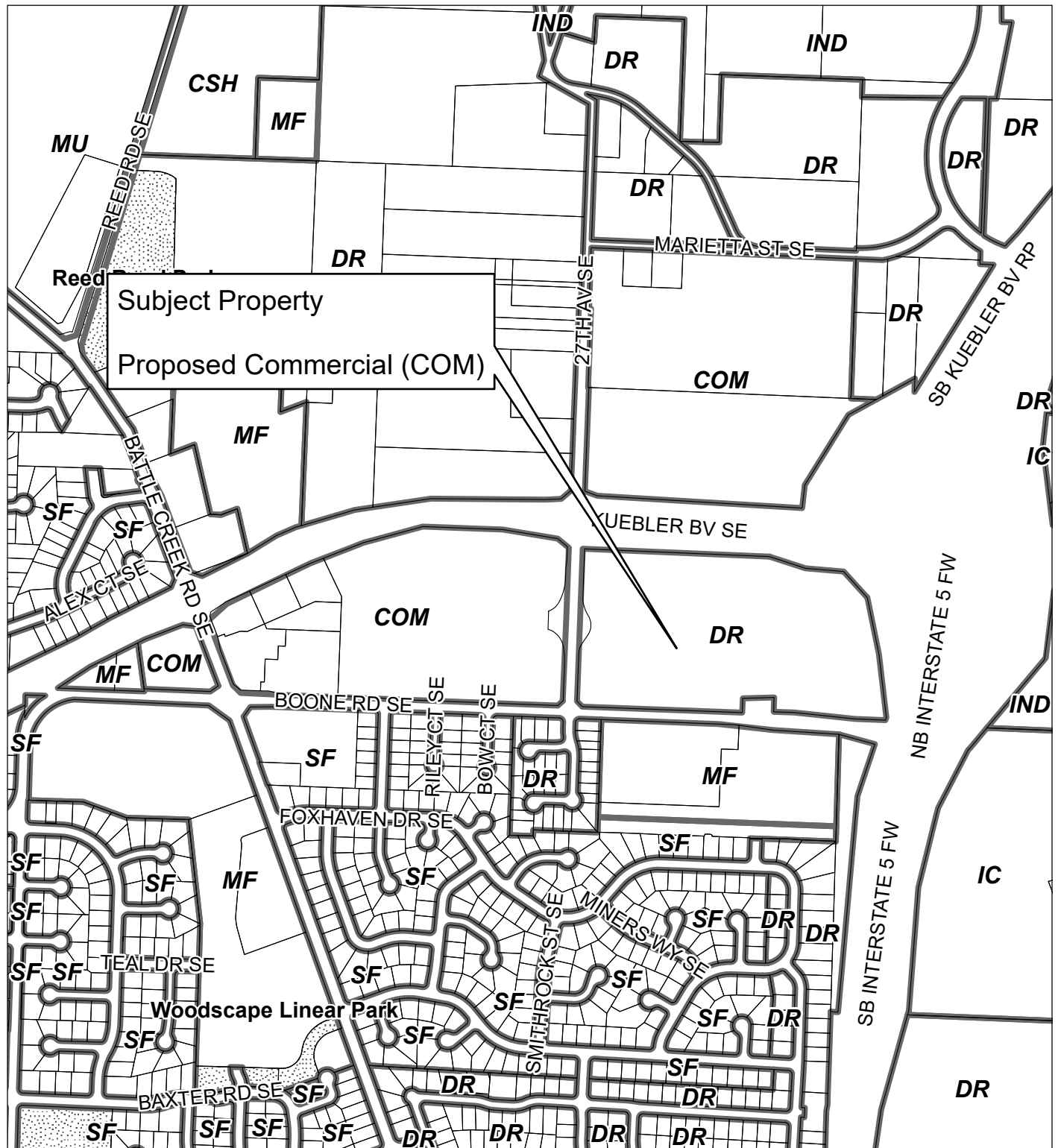
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CITY OF *Salem*
AT YOUR SERVICE
Community Development Dept.

PROPOSED COMPREHENSIVE PLAN CHANGE



Legend

- | | |
|---------------------------|---------|
| Comprehensive Plan | Taxlots |
| Urban Growth Boundary | Parks |
| Outside Salem City Limits | Schools |

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0 50' 100' 200 Feet



CITY OF *Salem*
AT YOUR SERVICE
Community Development Dept.



LAND USE APPEAL APPLICATION

1. GENERAL DATA REQUIRED *[to be completed by the appellant]*

CPC-ZC21-04 Feb 3 2022
 Case # Being Appealed Decision Date
 2900 Block of Kuebler BLVD
 Address of Subject Property
 555 Liberty St SE RM 305 Salem OR 97301
 Appellants Mailing Address with zip code
 SGNACHair@gmail.com 503-442-6639
 Appellant's E-mail Address Day-time Phone / Cell Phone

Appellant's Representative or Professional to be contacted regarding matters on this application, if other than appellant listed above:

Jake Krishnan 5249 Klamath St SE Salem OR 97306
 Name Mailing Address with ZIP Code
 jakekrishnan@gmail.com 503-442-6639
 E-Mail Address Day-time Phone / Cell Phone

2. SIGNATURES OF ALL APPELLANTS

Signature: Jake Krishnan Digitally signed by Jake Krishnan
Date: 2022.02.07 17:43:39 -08'00' Date: 02/07/2022

Printed Name: Jake Krishnan

Signature: _____ Date: _____

Printed Name: _____

3. REASON FOR APPEAL Attach a letter, briefly summarizing the reason for the Appeal. Describe how the proposal does not meet the applicable criteria as well as verification establishing the appellants standing to appeal the decision as provided under SRC 300.1010

FOR STAFF USE ONLY

Received By: Olivia Dias Date: 02/08/2022 Receipt No: _____
 Appeal Deadline: 02/18/2022 Case Manager: Olivia Dias
 See Attached



NEIGHBORHOOD ASSOCIATION

555 LIBERTY ST. SE RM. 305 SALEM OR 97301 • 503-588-6207 • WWW.CITYOFSALEM.NET/NEIGHBOR

Ref: Comprehensive Plan Change and Zone Change Case No. CPC-ZC21-04 for 2900 Block of Kuebler Blvd SE

Dear City Council,

South Gateway Neighborhood Association (SGNA), which encompasses the area under consideration for rezoning from RA to CR, is asking the City Council to reject this proposal. After hearing from representatives of the proposal, reviewing the project, and considering its further negative impacts on our neighborhood, the SGNA Board of Directors unanimously adopted a motion to oppose the action. SGNA is not alone in this opposition. It is our understanding that the proposal is also opposed by the Morningside Neighborhood Association, is not in conformance with Our Salem Project, and received a negative recommendation from city planning staff.

At the March meeting of the South Gateway Neighborhood Association, we were shown a preliminary proposal for the development of land on the East side of 27th Ave. SE, to the South of Kuebler Blvd. They said they were in the early stages of design and had no tenants yet but wanted to work with the community on development. We were told by proposal representatives that they wanted some upscale mixed use that might include medical offices, restaurants, walkable spaces and senior living facilities all of which would be compatible to the senior living development to the south. When queried as to why they wanted to change the zone from RA to Retail Commercial rather than Mixed Use-1 or Mixed Use-2, the answer was that while they didn't have any prospective tenants yet, but CR would open up more possibilities for development than Mixed Use.

The Mixed Use zone designation would be much more appropriate in this area which is surrounded by residential and church properties. The Mixed Use zone designation did not exist when the adjacent properties were rezoned to CR, so there were no other options at the time. This resulted in a major conflict with the neighborhood after a developer gave verbal promises which were not memorialized as conditions for approval. Further, when comparing permitted uses allowed in the various zoning classifications, we have been unable to find acceptable uses that would be permitted under the CR designation but not under MU or CO.

We would also like to point out that city staff, after painstaking research and investigation, had specifically pointed out potential traffic problems that would be caused by rezoning as CR designation, especially with the advent of the Costco site across 27th Ave. Adding another shopping development on the south side of Kuebler Blvd with drive-through services will create even more traffic problems and would therefore be an undesirable use on this property.

The Salem Gateway neighborhood Association urges you to reject the proposed rezoning action from RA to CR. Thank you for your consideration of our comments.

Jake Krishnan

Jake Krishnan

Chair, Board of Directors

South Gateway Neighborhood Association

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
FAX: 503-588-6005



*Si necesita ayuda para comprender esta informacion, por favor llame
503-588-6173*

DECISION OF THE SALEM PLANNING COMMISSION

**MINOR COMPREHENSIVE PLAN MAP AMENDMENT / ZONE CHANGE CASE
NO.: CPC-ZC21-04**

APPLICATION NO.: 21-115803-ZO / 21-115805-ZO

NOTICE OF DECISION DATE: February 3, 2022

SUMMARY: A consolidated application to change the Comprehensive Plan Map designation and zoning from “Single Family Residential” with RA (Residential Agriculture) zoning to “Commercial” with CR (Retail Commercial) zoning.

REQUEST: The applicant proposes to change the Comprehensive Plan Map designation and zoning from “Single Family Residential” with RA (Residential Agriculture) zoning to “Commercial” with CR (Retail Commercial) zoning. The subject property is approximately 24.66 acres in size, zoned RA (Residential Agriculture) and located at the southwest corner of the intersection of Kuebler Boulevard and I-5 (Marion County Assessor Map and Tax Lot Number: 083W12C / 2201).

APPLICANT: Mark Shipman, Saalfeld Griggs Lawyers on behalf of Doug Sproul

LOCATION: 2900 Block of Kuebler Blvd SE, Salem OR 97302

CRITERIA: Salem Revised Code (SRC) Chapters 64.025(e)(2) – Comprehensive Plan Map Amendments; 265.005 – Zone Changes

FINDINGS: The findings are in the Decision dated February 3, 2022.


DECISION: The **Planning Commission APPROVED** Minor Comprehensive Plan Map Amendment and Zone Change CPC-ZC21-04 subject to the following conditions of approval:

- Condition 1:** The subject property shall not contain more than three uses with drive through.
- Condition 2:** The subject property shall have no single retail store building that is constructed with more than 70,000 sq. ft.
- Condition 3:** Mitigation as detailed in the Transportation Planning Rule analysis shall be completed as follows:
 - *Battle Creek Road SE at Kuebler Boulevard SE –*
 - Construct a second southbound left turn lane on the Battle Creek Road SE approach.

- **27th Avenue SE at Kuebler Boulevard SE –**
 - Construct a second northbound right turn lane on 27th Avenue SE. The additional right turn lane shall extend from the site at the roundabout to the intersection with Kuebler. The signal shall be modified to accommodate the right turn lanes and splitter island.
 - Construct a second northbound left turn lane on 27th Avenue SE. The additional left turn lane shall extend from the roundabout to the intersection with Kuebler Boulevard SE. The signal shall be modified to accommodate the two left turn lanes.
 - Extend the westbound left turn lanes on Kuebler Boulevard to provide 600 feet of vehicle queueing in each lane.
 - Additional widening, improvements, and signal modifications will be required on the north leg of 27th Avenue to ensure proper lane alignment and safe operation at the intersection.
- **36th Avenue SE at Kuebler Boulevard SE –**
 - Construct a westbound right turn lane on Kuebler Boulevard SE at the intersection with 36th Avenue SE. The right turn lane shall provide for 100 feet of vehicle storage. Modify the traffic signal as required to construct the improvements.

VOTE:

Yes 7 No 1(Kopcho) Absent 1(Slater)



Chane Griggs, President
Salem Planning Commission

The rights granted by the attached decision have no expiration date.

Application Deemed Complete:	<u>September 23, 2021</u>
Public Hearing Date:	<u>December 21, 2021</u>
Notice of Decision Mailing Date:	<u>February 3, 2022</u>
Decision Effective Date:	<u>February 19, 2022</u>

Case Manager: Olivia Dias, Current Planning Manager, odias@cityofsalem.net, 503-540-2343

This decision is final unless written appeal and associated fee (if applicable) from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, or by email at planning@cityofsalem.net, no later than 5:00 p.m., Friday, February 18, 2022. Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 64 and 265. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Salem City Council will review the

appeal at a public hearing. After the hearing, the Salem City Council may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review by contacting the case manager, or at the Planning Desk in the Permit Application Center, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>

FACTS & FINDINGS

COMPREHENSIVE PLAN CHANGE / ZONE CHANGE CASE NO. CPC-ZC21-04

February 3, 2022

PROCEDURAL FINDINGS

1. On August 25, 2021, an application was filed for a Comprehensive Plan Map Amendment and Quasi-Judicial Zone Change by Mark Shipman of Saalfeld Griggs PC, on behalf of Boone Road Commercial LLC, to change 24.66-acres, the subject property, from RA (Residential Agriculture) to CR (Retail Commercial).
2. The consolidated application was deemed complete for processing on September 23, 2021, and a public hearing to consider the application was scheduled for November 2, 2021.
3. On June 10, 2021, the applicant's representative attended the South Gateway Neighborhood Association meeting, held virtually, to present their proposal, meeting the open house requirements of SRC 300.320.
4. Notice of the consolidated application was provided to surrounding property owners and tenants, pursuant to Salem Revised Code (SRC) requirements, on October 13, 2021. The property was posted in accordance with the posting provision outlined in SRC 300.620.
5. DLCD Notice. State law (ORS 197.610) and SRC 300.620(b)(1) require the City to provide the Oregon Department of Land Conservation and Development (DLCD) a minimum 35-day notice when an applicant or the City proposes an amendment to an acknowledged Comprehensive Plan or land use regulation or to adopt a new land use regulation. The City sent notice of the proposed Comprehensive Plan Change and Zone Change application to DLCD on September 24, 2021.
6. On November 2, 2021, the Planning Commission held a public hearing for the consolidated applications. The Planning Commission received testimony from the applicant and from the public. The public hearing was continued until November 16, 2021.
7. On November 16, 2021, the Planning Commission continued the public hearing until December 21, 2021 by request of the applicant to discuss with staff concerns regarding the Transportation Planning Rule analysis.
8. On December 21, 2021, the Planning Commission took testimony from the application and public, then closed the public hearing. The Commission voted to grant the Comprehensive Plan Change and Zone Change applications with three conditions of approval.
9. On January 25, 2022, the Planning Commission considered an Order with attached Facts and Findings prepared by staff. The applicant submitted an objection to the proposed Facts and Findings. The Commission voted to open the written record to review the applicant's objections.
10. On February 1, 2022, the Planning Commission voted to approve the Order and Facts and Findings prepared by staff after reviewing all evidence submitted into the record.

11. 120-Day Rule. Pursuant to Oregon Revised Statutes (ORS) 227.128, amendments to an acknowledged Comprehensive Plan are not subject to the 120-day rule. In addition, the requested Quasi-Judicial Zone Change included with the application is similarly not subject to the 120-day rule because, pursuant to ORS 227.178(10), the zone change has been filed concurrently, and is being considered jointly, with the proposed comprehensive plan amendment.

BACKGROUND / PROPOSAL

The applicant is requesting a comprehensive plan map amendment from RA (Residential Agriculture) to CR (Retail Commercial) for the subject property.

APPLICANT'S STATEMENT

Land use applications must include a statement addressing the applicable approval criteria and be supported by proof they conform to all applicable standards and criteria of the Salem Revised Code. The written statement from the applicant summarizing the request and addressing compliance with the applicable approval criteria can be found in the record 'Written Statement' when the application was submitted. Additional written findings were submitted into the record 'DKS letter dated November 1, 2021' 'DKS letter dated December 10, 2021' and 'Kellington Law Group, PC letter dated December 10, 2021'.

The applicant submitted a conceptual plan indicating commercial retail, lodging, mixed use, office and residential uses on the property. The Transportation Planning Rule analysis submittal also includes conceptual site plans with a shopping center contained in several areas and potential uses on the subject property, and the TPR Study uses a worst-case scenario in the analyses as required by the rule.

Although the applicant's site plan illustrates how the site could be developed under the proposed Comprehensive Plan Map designation; the site plan and illustrations submitted were conceptual only. The applicant has not proposed particular development and has not requested development approval as part of the subject application.

Planning Commission utilized the information included in the applicant's statement to evaluate the proposal and to establish the facts and findings.

SUMMARY OF RECORD

The following items are submitted to the record and are available upon request: 1) All materials and testimony submitted by the applicant, including any applicable professional studies such as traffic impact analysis, geologic assessments, stormwater reports; 2) any materials, testimony, and comments from public agencies, City Departments, neighborhood associations, and the public; and 3) all documents referenced in this report.

FACTS AND FINDINGS

1. Salem Area Comprehensive Plan (SACP)

The Salem Area Comprehensive Plan (SACP) map designates the subject properties as

"Developing Residential". The proposal includes changing the Comprehensive Plan designation of the subject property to "Commercial."

The Comprehensive Plan designations of surrounding properties include:

North: (Across Kuebler Boulevard SE) "Commercial"

South: (Across Boone Road SE) "Developing Residential" and "Multiple Family"

East: Right-of-way for Interstate 5

West: (Across 27th Avenue SE) "Commercial"

Components of the Comprehensive Plan

The Salem Area Comprehensive Plan is the long-range plan for guiding development in the Salem urban area. The overall goal of the plan is to accommodate development in a timely, orderly, and efficient arrangement of land uses and public facilities and services that meets the needs of present and future residents of the Salem urban area. Many different documents and maps, when taken together, comprise the Salem Area Comprehensive Plan.

Salem Transportation System Plan (TSP): The TSP uses a Street Classification System to determine the functional classification of each street within the City's street system. Kuebler Boulevard, designated as a Parkway in the TSP, which abuts the north boundary of the subject property.

Relationship to the Urban Service Area

The subject property is located outside of the City's Urban Service Area. Pursuant to the Urban Growth Management requirements contained under SRC Chapter 200, an Urban Growth Preliminary Declaration is required. An Urban Growth Preliminary Declaration application was previously approved (UGA09-08) and is now expired.

2. Zoning

The subject property is zoned RA (Residential Agriculture). Surrounding properties are zoned and used as follows:

North: (Across Kuebler Boulevard SE) CR (Retail Commercial)

South: (Across 27th Avenue SE) RA (Residential Agriculture) and RM-II (Multiple Family Residential)

East: Right-of-way for Interstate 5

West: (Across 27th Avenue SE) CR (Retail Commercial)

3. Existing Conditions

The subject site consists of four adjoining rectangular lots totaling 24.66 acres in size (Marion County Assessor's Map and Tax Lot Number 083W12C / 2201). The subject property is primarily undeveloped. The subject property slopes downward from a high point of approximately 380 feet above mean sea level (AMSL) along the south property line to approximately 298 feet AMSL at the east property line and approximately 312 AMSL at the north property line.

4. City Department Comments

Salem Public Works Department – The Public Works Department, Development Services Section, reviewed the proposal and submitted comments.

Salem Fire Department – The Salem Fire Department submitted comments indicating that they have no concerns with the request.

Salem Building and Safety Division – The Building and Safety Division has reviewed the proposal and indicated no concerns.

5. Public Agency & Private Service Provider Comments

Oregon Department of Land Conservation and Development (DLCD) – No comments received.

Cherriots – Cherriots commented that two stops should be provided to facilitate the expansion of the existing public transportation routes. The applicant and Cherriots discussed providing stops on the proposed north-south street shown on south of the round-about.

6. Neighborhood Association and Public Comments

The subject property is located within the boundaries of the South Gateway Neighborhood Association. The property is adjacent to the Morningside Neighborhood Association (across Kuebler Boulevard SE) and Southeast Mill Creek Association (SEMCA) (across Interstate – 5).

Required Open House/Neighborhood Association Meeting. Prior to application submittal, SRC 300.320 requires the applicant for a proposed minor amendment to the City's comprehensive plan map to either arrange and conduct an open house or present their proposal at a regularly scheduled meeting of the neighborhood association the property is located within. On June 10, 2021, the applicant's representative attended the South Gateway Neighborhood Association meeting, held virtually, to present their proposal. A summary of the comments provided at the neighborhood association meeting was submitted into the record.

Neighborhood Association Comment

The City provided a notice of filing and request for comments to the South Gateway Neighborhood Association, Morningside Neighborhood Association and Southeast Mill Creek Association (SEMCA) pursuant to SRC 300.620(b)(2)(B)(v), which requires notice to be sent to any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property.

Comments were received from the South Gateway Neighborhood Association indicating opposition to the proposal. South Gateway indicated Mixed Use (MU-I or MU-II) would be better suited for the subject property. South Gateway and four surrounding property owners indicate that traffic is a concern due to the new Costco building being constructed and that the addition of a drive-thru to the area could be detrimental to the traffic system.

Response: Traffic and traffic mitigation is listed below under the Transportation Planning Rule analysis.

Public Comment

Notice was also provided, pursuant to SRC 300.620(b)(2)(B)(iii), (vi), & (vii), to all property owners and tenants within 250 feet of the subject property. Posted notice signs for the public hearing were placed visible from each street frontage of the subject property and remained in place through the day of the public hearing as required by SRC 300.620(b)(3).

Public comments have been received and submitted into the record. Comments raised concerns about traffic.

Response: Traffic and traffic mitigation is listed below under the Transportation Planning Rule analysis.

Homeowners Association

The subject property is not located within a Homeowners Association.

Oregon Department of Land Conservation and Development (DLCD) Notice

State law (ORS 197.610) and SRC 300.602(b)(1) require the City to provide the Oregon Department of Land Conservation and Development (DLCD) a minimum 35-day notice when an applicant or the City proposes an amendment to an acknowledged Comprehensive Plan or land use regulation or to adopt a new land use regulation. The City sent notice of this proposal to DLCD on September 24, 2021. DLCD did not submit any comments.

7. MINOR COMPREHENSIVE PLAN MAP AMENDMENT APPROVAL CRITERIA

Salem Revised Code (SRC) 64.025(e)(2) establishes the approval criteria for Comprehensive Plan Map amendments. In order to approve a quasi-judicial Plan Map

amendment request, the decision-making authority shall make findings of fact based on evidence provided by the applicant that demonstrates satisfaction of all of the applicable criteria. The applicable criteria are shown below in **bold** print. Following each criterion is a finding relative to the amendment requested.

SRC 64.025(e)(2)(A): The Minor Plan Map Amendment is justified based on the existence of one of the following:

- (i) ***Alteration in Circumstances.*** Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate.
- (ii) ***Equally or Better Suited Designation.*** A demonstration that the proposed designation is equally or better suited for the property than the existing designation.
- (iii) ***Conflict Between Comprehensive Plan Map Designation and Zone Designation.*** A Minor Plan Map Amendment may be granted where there is conflict between the Comprehensive Plan Map designation and the zoning of the property, and the zoning designation is a more appropriate designation for the property than the Comprehensive Plan Map designation. In determining whether the zoning designation is the more appropriate designation, the following factors shall be considered:
 - (aa) **Whether there was a mistake in the application of a land use designation to the property;**
 - (bb) **Whether the physical characteristics of the property are better suited to the uses in the zone as opposed to the uses permitted by the Comprehensive Plan Map designation;**
 - (cc) **Whether the property has been developed for uses that are incompatible with the Comprehensive Plan Map designation; and**
 - (dd) **Whether the Comprehensive Plan Map designation is compatible with the surrounding Comprehensive Plan Map designations.**

Finding: Since the annexation of the subject property, the properties in the surrounding area have undergone significant economic change. The property west of the subject property was re-zoned to CR (Retail Commercial) and CO (Commercial Office). The property north of the subject property was rezoned to CR in March of 2016. The property south of the subject property has been rezoned to multiple family residential and developed as an assisted living facility. In addition, East of Interstate 5 properties have developed to accommodate various commercial uses including Oregon State Police Headquarters, Parks and Recreation Facility, Amazon Distribution and other facilities that make Kuebler an important commercial corridor.

The Commercial plan designation is equally or better suited for the subject property than the Developing Residential designation. The primary goal of the Commercial designation is to maintain and promote of the City's as a commercial center for Marion-Polk Counties. The location of the subject property, as well as the surrounding uses, makes it well-suited

for Commercial designation. The location adjacent to I-5, and possibly being developed into a retail center would promote Salem as a regional commercial center as well as provide the area with a broader range of employment uses. The commercial development is likely to provide the opportunity for commercial offices, including medical offices, which provide higher than average wage jobs as well as retail services and sales jobs. (Salem Economic Opportunities Analysis p. 28 for wage impact analysis).

The proposal is justified based on subsection (ii), Alteration in Circumstances. Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate and subsection (iii), the proposed designation is equally or better suited for the property than the existing designation. The applicant does not assert that a mistake has been made in the application of the Developing Residential designation to the subject property. Staff concurs with the applicant's characterization of the Developing Residential designation as appropriate for holding areas for future development not currently served by urban levels of infrastructure. The Urban Growth Preliminary Declaration issued for the subject property (UGA09-08) specified the infrastructure improvements needed to develop the subject property as a 26.44-acre shopping center. The Urban Growth Preliminary Declaration has expired and the applicant would need to re-apply to determine current infrastructure improvements needed to develop the property. The subject property provides a site for higher intensity retail development that would maximize investment in public services in the vicinity, especially the existing arterial street network and future master-planned utilities.

There are several Comprehensive Plan policies, which are addressed below, addressing location of commercial properties such as being located on major arterials, creating complete neighborhoods, including clustering of residential and commercial uses. Creating complete neighborhoods is one way to reduce reducing vehicle trips that contribute to climate change, as discussed in the City's draft Climate Action Plan.

The Planning Commission found that physical factors, such as topography or other physical features of the subject property and abutting the I-5 interchange would make the property incompatible for residential development.

In 2015, the City completed an Economic Opportunities Analysis (EOA) for areas within the Salem Urban Growth Boundary for the years 2015 to 2035. The study indicated a shortage of approximately 100 gross acres of retail commercial land within the Salem UGB. Conversely, the accompanying Housing Needs Analysis (HNA) indicated a large surplus of available land for single family detached housing, primarily consisting of lands within the "Single Family Residential" and "Developing Residential" designations.

Several factors make the subject property especially well-suited for the Commercial designation. The subject property has direct access to a collector (27th Avenue SE), local road (Boone Road SE), frontage on a designated parkway (Kuebler Boulevard SE), and close proximity to a major freeway interchange at Kuebler Boulevard and I-5. The site is located across 27th Avenue from a 32-acre site in which a Plan Map and zone change from Developing Residential with RA zoning to a Commercial designation with CR zoning was approved in 2006 (CPC-ZC06-06) and across Kuebler Boulevard from a 31.96-acre site in which also had a Plan Map and zone change from Developing Residential with RA zoning to a Commercial designation with CR zoning in 2016.

The higher classification streets in the vicinity provide sufficient access for commercial uses, particularly those with a regional customer base. Further, the majority of surplus developable acreage identified in the HNA is not benefitted by the confluence of freeway, parkway, and arterial network access that help make the subject property especially well-suited to commercial development. Considering these factors the subject property is equally or better suited for the proposed designation than its current designation.

The Planning Commission finds the application meets this criterion.

SRC 64.025(e)(2)(B): The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed plan map designation.

Finding: The subject property is located outside of the City's Urban Service Area (USA). However, the subject property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed Commercial designation.

Natural gas, sanitary services, water, and power lines are located within Boone Road SE. Sanitary, power, and natural gas service lines are also available along 27th Street SE. Storm drain infrastructure is available in Kuebler Blvd.

There is an existing 24" public sanitary line located in 27th Avenue SE with manholes approximately mid-way along the front and at the intersection of Kuebler Blvd. that are deep enough to service this property. There is also an eight (8") inch PVC sewer main located within Boone Road SE east of the Boone Road SE and 27th Avenue SE intersection; however due to topographic constraints it will not be able to service the Subject Property.

There is an existing 24" and 30" S2 water line in Boone Road SE. The Subject Property is within two water service levels: S-1 and S-2. There are no facilities available to serve the S-1 water service level at this time. However, a twenty-four (24") inch S-2 ductile iron water main is located in Boone Road SE and a thirty (30") inch S-2 ductile iron water main is located in Boone Road SE. Applicant could connect to the line with a temporary connection agreement with City of Salem, as no S-1 service is available.

There is an overhead power, cable, and telecom line along the north side of Boone Road SE and along the east side of 27th Avenue there is an existing gas main in Boone Road SE along the north side of the road and along 27th Avenue on the east side of the road.

The majority of the Subject Property currently drains to the center of the property where it and then flows north to the existing drainage ditch that flows east to an existing 36" storm drain that crosses north under Kuebler Blvd. The eastern fifth of the project flows east to the I-5 ditches and culverts.

The applicant will be required to apply for an Urban Growth Preliminary Declaration permit prior to development. The permit will identify those public facilities that must be constructed in order to fully serve any proposed development on the subject property

consistent with the City's adopted Master Plans and Area Facilities Plans. The existing streets, water, sewer, and storm water facilities are available to serve the subject property. Site-specific infrastructure requirements will be addressed in the Site Plan Review process in SRC Chapter 220.

The adequacy of the City's transportation facilities to serve the uses allowed under the requested plan designation and zoning is extensively discussed in the findings below related to Goal 12 and compliance with the Comprehensive Plan and Salem Transportation System Plan. The Planning Commission finds that those findings and the evidence the findings rely upon, demonstrate that with the transportation improvements proposed by the Applicant, which are imposed as conditions of approval for the zone change application, the proposed uses are capable of being served by the City's transportation system.

The Planning Commission finds that the proposal meets this criterion.

SRC 64.025(e)(2)(C): The proposed plan map designation provides for the logical urbanization of land.

Finding: The development pattern in the vicinity, particularly this segment of the Kuebler corridor, has transitioned over the past several years, shifting from rural residential uses to uses that are primarily commercial in nature. The proposed plan map designation is consistent with the current development pattern and will provide for the logical urbanization of land.

The immediate vicinity of the subject property is in flux with commercial development to the west (Costco), multi-family and single-family developments to the south, commercially zoned property to the north along with a 177-lot single family development and possible Multi-Family development to the northwest of the property. The subject property sits near the center of a large area of future commercial and residential (multiple family) development. A Commercial Plan Map designation would be consistent with the surrounding area of Commercial designations, and the mixture of land uses that have developed according to that designation. As part of its current draft of the "Our Salem" proposal, the City is suggesting a change the Comprehensive Plan map designation of the Subject Property to Commercial., The City's current suggestion is for CO (Commercial Office) zoning for the subject property, due in part to transportation system impacts associated with changing the zoning to CR (Commercial Retail). The "Our Salem" proposal is expected to go through a public hearing process in spring of 2022 and is not final until adoption by City Council.

The Planning Commission recognizes that there is some contention in the record as to what the appropriate zoning for the property should be or whether certain types of commercial uses should not be allowed on the property. Staff indicate that the Our Salem process currently contemplates the property will ultimately be zoned "Commercial Office;" and SGNA indicates that it prefers Mixed Use Zoning. Both implement the "Commercial" Plan designation. The applicant seeks, and this decision approves, "Commercial Retail" zoning. The CR zone also implements the "Commercial" Plan designation. However, the Plan standard articulated above asks about the "Proposed Plan Map designation" and not

the zoning and there is little, if any, substantive argument that it would be inappropriate or illogical to plan designate the subject property Commercial.

The Planning Commission finds that the proposal meets this criterion.

SRC 64.025(e)(2)(D): The proposed land use designation is consistent with the Salem Area Comprehensive Plan and applicable Statewide planning goals and administrative rules adopted by the Department of Land Conservation and Development.

Finding: The Planning Commission notes that compliance with the Comprehensive Plan and the statewide planning goals are requirements for both a minor plan change application and a zone change application. Consequently, the findings immediately below refer to the zone change application in instances where a response that is applicable for the Plan change application is not an adequate response for the zone change application or where there is a distinction between different zones within the same plan designation that warrant a specific response as to commercial retail zoning. That said, many of the findings overlap in their entirety. The purpose of consolidating responses where possible is for efficiency and brevity, so that the corresponding zone change standards can and do adopt responses by reference, where appropriate.

The applicable Goals and Policies of the Comprehensive Plan are addressed as follows; the Statewide Planning Goals are addressed after the policies:

Salem Urban Area Goals and Policies, B. General Development Goal (Salem Comprehensive Policies Plan):

To ensure that future decisions concerning the use of land within the Salem urban area are consistent with State Land Use Goals.

Finding: The approval standards for both the comprehensive plan change and zone change applications require a demonstration of compliance with the Statewide Planning Goals. Those findings are included in these findings and demonstrate that the proposal is consistent with the Statewide Planning Goals.

The proposed plan designation and zone change, and the development that will be permitted consistent with SRC development standards will also be consistent with the policies under this Comprehensive Plan goal that apply to such approvals. This includes, but is not limited to, the policies that promote citizen involvement, economic growth, carrying capacity, optimal use of the land, street improvements, development compatibility, and lighting. Each of these policies is implemented by provisions of the zoning code, which will apply to all development permitted under the new plan designation and zoning. Furthermore, no participant in this proceeding has contended that the proposal or development that would be permitted under the Commercial Plan designation and CR zone, would be inconsistent with any of the policies under this Comprehensive Plan Goal.

The Planning Commission finds that the applications are consistent with this Comprehensive Plan Goal and its implementing policies.

Salem Urban Area Goals and Policies, Growth Management Goal (Page 28, Salem Comprehensive Policies Plan):

To manage the growth in the Salem urban area through cooperative efforts of the City of Salem and Marion and Polk Counties, to ensure the quality of life of present and future residents of the area, and to contain urban development to preserve adjacent farm land.

Finding: The public facilities and service needs for the subject property would be provided at the time of development of the site. All public services and utilities are available in the vicinity of the subject property including water, sewer, storm drainage, streets, sidewalks, fire and police protection, electricity, telecommunications, and solid waste disposal. The proposed Comprehensive Plan Map amendment with concurrent Zone Change is consistent with these policies. Master-planned facilities necessary to support commercial development on the subject property will be evaluated through a Urban Growth Preliminary Declaration.

Salem Urban Area Goals and Policies, E. Residential Development Goal (Salem Comprehensive Policies Plan):

To promote a variety of housing opportunities for all income levels and an adequate supply of developable land to support such housing.

Finding: Although this proposal removes land from the residential lands inventory, evidence in the record demonstrates that there is a surplus of residential lands within the City's UGB. For this reason, the proposal will not result in an inadequate supply of developable land to support the City's housing needs. The proposal promotes a variety of housing opportunities and an adequate supply of developable residential land, by helping to make this south part of the City desirable for such residential uses by ensuring that there are commercial retail opportunities in proximity to residential uses and residentially developing areas, thus contributing to more complete communities, with fewer needs for vehicular trips to such opportunities if they are located further away.

Not only are commercial retail uses complementary to residential uses, the location of this designation and zoning furthers the City's policies aimed at minimizing vehicle travel distances and encouraging non-vehicular access to such services by locating residential areas and commercial services in closer proximity than has historically occurred.

The proposal is consistent with this Comprehensive Plan Goal and its implementing policies.

Salem Urban Area Goals and Policies, F. Mixed-Use Development Goal (Salem Comprehensive Policies Plan):

To provide a mixture of complementary land uses that may include housing, retail, offices, services, industrial and civic uses, to create economic and social vitality.

Findings: The Commercial plan designation and the requested Commercial Retail zoning allows a broad range of uses on the subject property. Although not strictly one of the “mixed use” zones some public comments requested, the requested CR zoning does not preclude mixed use development of the site and the Applicant has indicated a desire for that to occur if at all possible.

One of the reasons for approving the CR zone instead of mandating one of the MU zones is the Comprehensive Plan policy under this goal that encourages flexibility in the siting and design of new developments to respond to the marketplace. As the Applicant explained, the CR zone provides that greater flexibility. Therefore, the Planning Commission imposed a condition of approval, to limit the subject property to three drive-through facilities on the subject property.

Salem Urban Area Goals and Policies, Commercial Development Goal (Page 35, Salem Comprehensive Policies Plan):

To maintain and promote the Salem urban area as a commercial center for the Marion-Polk County metropolitan area.

Finding: The proposed commercial designation of the subject property would allow development of a mixed-use development or shopping center serving the southeastern portion of the Marion-Polk County metropolitan area. Existing commercial concentrations elsewhere in the region, such as downtown Salem, the Commercial Street SE corridor, and Lancaster Drive are a considerable distance from existing and future development in the southeastern portion of the metropolitan area. Transportation access to the subject property would promote use of a site within the Salem urban area as the commercial center for underserved areas inside and outside of the City limits.

Policy G.4. Community shopping and service facilities shall be located adjacent to major arterials and shall provide adequate parking and service areas. Land use regulations shall include provisions for siting and development which discourage major customer traffic from outside the immediate neighborhoods from filtering through residential streets.

Finding: The subject property is well-served by the street network in the vicinity, which includes collectors, Kuebler Boulevard, and the adjacent I-5 freeway interchange. As surrounding properties develop, the existing network of higher-classification streets will allow regional traffic to access the site without filtering through neighborhood residential streets.

Policy G.5. Unless the existing development pattern along arterials and collectors commits an area to strip development, new commercial development shall be clustered and located to provide convenience goods and services for neighborhood residents or a wide variety of goods and services for a market area of several neighborhoods.

Finding: The proposed Commercial designation of the site would facilitate clustered retail development at one quadrant of the I-5/Kuebler Boulevard interchange, allowing a wide

variety of goods and services to be provided in a location where existing transportation facilities provide access from several different neighborhoods.

Salem Urban Area Goals and Policies, J. Transportation Goal (Salem Comprehensive Policies Plan):

To provide a balanced, multimodal transportation system for the Salem Urban Area that supports the safe and efficient movement of goods and people.

Findings: The City has developed the Salem Transportation System Plan (STSP), which establishes transportation objectives and policies and provides a hierarchical system of streets and highways to provide optimal mobility for all travel modes throughout the City's urban area. Kuebler Boulevard SE abuts the Subject Property to the north and is classified as a Parkway by the STSP street classification system. Kuebler Boulevard SE is interconnected to a network of streets. 27th Avenue abuts the Subject Property to the west and is designated a collector on the STSP street classification map. Boone Road SE abuts the Subject Property to the south and is also a designated collector street. Battle Creek is a designated minor arterial that provides north south connectivity to the site, via Boone Road SE. The Subject Property is well connected to the existing public street system, thereby providing connectivity with the surrounding neighborhood as well as the broader Salem Community. The subject property also is connected to the City's public transportation network, as evidenced by the Cherriots comments in the record that explains that it has discussed with the Applicant placing two public transportation stops to serve the subject property and the Applicant has agreed to do so. Exactly whether there will be one bus stop or two and the precise location of such stop(s) will be decided in the subsequent site plan review application.

The Applicant also recognizes that the development permitted under the proposal could adversely impact the City's transportation system. As discussed under Goal 12 below and referred to elsewhere in these findings, the Applicant has proposed conditions of approval that will mitigate the additional impacts to the transportation system that would result from the proposed plan designation and zoning when compared to existing allowed development. The Planning Commission imposes those conditions of approval as part of this decision.

The proposal is consistent with this Comprehensive Plan goal.

Multimodal Transportation System

4. The transportation system for the Salem Urban area shall consist of an integrated network of facilities and services for a variety of motorized and nonmotorized travel modes.

Connectivity and Circulation

5. The vehicle, transit, bicycle, and pedestrian circulation systems shall be designed to connect major population and employment centers in the Salem Urban Area, as well as provide access to local neighborhood residential, shopping, schools, and other activity centers.

Findings: The evidence in the record establishes that the Subject Property can be served by transit, pedestrian sidewalks and bike lanes, all of which encourage the use of alternative modes of transportation. Additionally, the proposed commercial retail zoning will result in development that can offer an incentive for residents of the neighborhood to walk, bike and use public transport to reach a vibrant commercial hub that can provide for a variety of their needs in this otherwise underserved area of the City.

The proposal is consistent with the above policies.

Supportive of Land Use Plan Designations and Development Patterns

6. The provision of facilities and services shall reflect and support land use designations and development patterns as identified in the Salem Area Comprehensive Plan. The design and implementation of transportation facilities and services shall be based on serving current and future travel demand, residential densities, retail, and employment centers.

7. Local governments shall encourage the expansion of transit services throughout and beyond the Salem Urban Area, especially to areas of increased residential densities, major commercial concentrations, and large institutional and employment centers.

Growth Management

8. The construction of transportation facilities shall be timed to coincide with community needs, and shall be implemented in such a way as to minimize impacts on existing development.

9. Improvements to the transportation system, in addition to those in or abutting a development, may be required as a condition of approval of subdivisions and other intensifications of land use.

Findings: As discussed above, the subject property is proximate to collector streets, a minor arterial, and a parkway. The Applicant proposes not only to utilize this existing street network, but to also enhance it, through improvements, in order to accommodate the additional traffic that will flow from the proposed Commercial designation and Commercial Retail zoning. Such mitigation will minimize the impacts on existing development that would otherwise result from the proposal. The mitigation is imposed in the conditions of approval for the zone change application. The proposal is consistent with the above plan policies regarding transportation facilities. The Planning Commission finds persuasive the Applicant's evidence that with the proposed mitigation imposed by conditions of approval that this Decision requires, the affected area transportation system will function no worse with the property being Commercially designated and CR zoned land, than if it stayed RA although wait times at near-by signal lights will increase substantially. It is approval as outlined in this decision, that meets these Plan policies because approving the proposal as here, responds to anticipated travel demands, coincides with undisputed community needs for more retail opportunities in this part of the city and the Planning Commission imposes conditions of approval to ensure that the affected transportation system functions no worse under the proposal than it would without it.

Policy 6 speaks of facilities and services based, in part, on “future travel demand” and retail services, not just present demand. The Planning Commission finds that wording expressly envisions that future demand may differ from what presently exists and that transportation facilities should respond accordingly, limited by geography and topography of the facility in question. Other policies (7-9) encourage the expansion of transportation facilities and services to reflect and coincide with evolving community needs.

The proposal is estimated to generate 20,000 vehicle trips. The Applicant's traffic analyses make clear, over half of the approximate number of trips estimated per day are either trips between land uses on the subject property and the Costco shopping center or pass-by trips (which are trips that are already on the road that divert to the site before continuing to their primary destination).

The applicable Statewide Planning Goals are addressed as follows:

Statewide Planning Goal 1 – Citizen Involvement: *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

Finding: On June 10, 2021, the applicant's representative attended the Southeast Salem Neighborhood Association Meeting, held virtually, to present their proposal. A public hearing notice was mailed to the affected property owners, all property owners within 250 feet of the subject property, to the South Gateway Neighborhood Association and to the adjacent Southeast Mill Creek Association and Morningside Neighborhood Association. The applicant posted the subject property prior to the public hearing. This satisfies Citizen Involvement described in Goal 1.

Statewide Planning Goal 2 – Land Use Planning: *To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

Finding: The City has complied with the Goal requirements for establishing and maintaining a land use planning process. The Oregon Land Conservation and Development Commission have acknowledged the Salem Area Comprehensive Plan to be in compliance with the Statewide Planning Goals.

Statewide Planning Goal 3 – Agricultural Lands and Goal 4 – Forest Lands:

Planning Commission Findings: The proposed plan amendment does not affect any lands designated agricultural lands or forest lands or their inventories. Consequently, Goal 3 and Goal 4 are not invoked by the application.

The proposal is consistent with Goals 3 and 4.

Statewide Planning Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources: *To protect natural resources and conserve scenic and historic areas and open spaces.*

Finding: There are possible scenic, historic, or cultural resources on the subject property. Prior to development, the property owner would need to consult with the City Historic Preservation Program Manager. According to the Salem Keizer Local Wetland Inventory (LWI) there are wetlands mapped on the subject property. The applicant has provided a wetland delineation as part of their application. The City's wetland ordinance, SRC Chapter, requires notice and permitting through the Department of State Lands (DSL).

The application will be reviewed for compliance with the City's tree preservation ordinance and any applicable wetland standards at the time of development. Staff finds that the proposal is consistent with Goal 5.

Statewide Planning Goal 6 – Air, Water and Resources Quality: *To maintain and improve the quality of the air, water and land resources of the state.*

Planning Commission Findings: Goal 6 is largely a planning directive to local governments and, as such, does not provide specific standards applicable to site-specific plan designation decisions. The application narrative notes that the subject property lies within the city limits, where an urban level of development is intended to occur in both scale and density. The application narrative also notes the range of public facilities and services designed to protect air, water and resource quality within the city, which this decision finds are both available and adequate.

The Planning Commission concurs with the applicant that the commercial uses that will flow from the plan designation change will reasonably help reduce impacts to air quality through its proximity to near-by residential lands and access to public transportation, which will reduce the length of or need for vehicle motor trips. The Planning Commission also finds the application has demonstrated that development under the proposed plan designation will not adversely impact natural resources because there are no significant natural resources on the subject property.

The proposal is consistent with Goal 6.

Statewide Planning Goal 7 – Areas Subject to Natural Disasters and Hazards: *To protect people and property from natural hazards.*

Planning Commission Findings: As the application narrative explains, the City has complied with Goal 7 by adopting specific policies and development standards that protect against flood hazards, potential landslides and other natural hazards. The implementing measures are found in the acknowledged SRC under Chapters 809 and 601 and are imposed at the time a development application is reviewed.

The City's adopted landslide hazard susceptibility maps show the subject property is mapped within areas that have 2 to 3 landslide hazard susceptibility points. Given that 3 activity points are associated with commercial building permits and the City's landslide hazard ordinance, SRC Chapter 810, requires any development proposal with a cumulative total of 5 to 8 points submit a geologic assessment in conjunction with the application, the City's implementing measures will be applied at the time a development

proposal is submitted. Given the moderate landslide hazard susceptibility classification (5 to 8 points) for the subject property is classified and that the property's point rating is at the lower end of that scale, the Planning Commission concludes that it is feasible that a proposed project that satisfies the requirements of the applicable implementing measures can be designed and approved. Nothing in the record claims, nonetheless demonstrates, that the site cannot be safely developed, whether with commercial or residential uses.

There are no other identified natural disaster or hazards on the subject property. The Planning Commission finds that the proposal is consistent with Goal 7.

Statewide Planning Goal 8 – Recreational Needs: *To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

Planning Commission Findings: The Applicant Statement correctly states:

“The Subject Property is not within a designated or identified open space area and does not contain any structures subject to historic review. Furthermore, the property does not contain any wildlife habitat, groundwater resources, or natural areas other than the wetlands addressed above. Therefore, Goal 8 is not applicable to this proposal.”

Statewide Planning Goal 9 – Economic Development: *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

Finding: The City's Comprehensive Plan contains commercial and economic development policies pertaining to the identification and protection of employment lands. This proposal to amend the comprehensive plan map from Developing Residential to Commercial will increase the City's employment lands, as the change will allow for the development of commercial uses on the Subject Property. The proposal will provide a site for a community level retail center. This consolidated land use proposal increases economic opportunities for City residents. As such, this proposal is consistent with Goal 9's requirement to provide a variety of economic opportunities for City residents, including commercial opportunities. (OAR 660-009-0000).

The proposed comprehensive plan and zoning map amendment will convert approximately 24.66 acres of vacant residentially zoned land to a commercial designation. Consistent with the City's obligations to provide economic opportunities under Goal 9, per OAR 660-009-0015, an Economic Opportunity Analysis (EOA) was conducted by ECONorthwest and adopted by City Council in October 2014. Consistent with economic development protections of Goal 9 and the objectives of understanding the opportunities for the next 20 years, the report compared the supply of suitable buildable commercial land (298 acres) to the projected demand (569 acres) and concluded that there is a deficiency of 271 acres of commercial land to meet the 20-year growth demand. The EOA further concluded that roughly 40 percent of the commercial land deficiency, or approximately 100 acres, are needed for retail services, as detailed by the “Land Sufficiency” section in the EOA (pages 27-28).

As a residentially-designated property, the site's economic development potential is currently limited as compared to regional shopping facilities, community and neighborhood shopping and service facilities, and other uses envisioned by the "Commercial" SACP designation and supported by the accessibility and visibility of the site. The proposed change of designation to "Commercial" will increase the number of permitted uses at the site and better takes into account the location of the subject property, thereby open up additional opportunities for economic development, consistent with the intent of the goal. The proposal meets the requirements of Goal 9.

Statewide Planning Goal 10 – Housing: *To provide for the housing needs of citizens of the state.*

Finding: Oregon Statewide Planning Goal 10 requires the City to allocate adequate amounts and types of land to accommodate the needed housing units for all incomes. The City has accepted, but not adopted, a Housing Needs Analysis (HNA) prepared in 2015 which includes a Buildable Land Inventory identifying a surplus of approximately 1,975 acres for single family residential development and a deficit of land available for multifamily residential development. According to the Housing Needs Analysis (HNA), "Salem has a deficit of capacity in the MF designation, with a deficit of 2,897 dwelling units and a deficit of 207 gross acres of residential land." As of December 2020, the City has added 40 net acres of Multiple Family designated land, reducing the projected deficit to 167 acres. Additionally, the City has added 89 acres of Mixed-Use designated land which allows multi-family development as an outright permitted use, thereby further increasing the land available for multi-family development.

On February 8, 2016, the City adopted Resolution 2016-05, which includes a work plan to address the known deficit of Multi Family Residential lands. The City is expected to fully address the multi-family land deficit in 2022 with the adoption of proposed map changes in the *Our Salem* project.

The proposal will remove approximately 24.66 acres from the existing inventory of land that is designated for single family housing. The City underwent a Housing Needs Analysis (HNA) to project the City's housing needs over the course of 20 years from 2015 to 2035. The report, conducted by ECONorthwest, found that the City of Salem has a surplus of approximately 1,975 acres of land designated for single-family detached housing. Of the total residential and mixed-use comprehensive plan designations, eighty three percent of this area is land within the Developing Residential and Single-Family Residential designations. Through these recent HNA and EOA studies, adequate recent analysis has been conducted to confirm that the applicant's proposal to convert 24.66 acres of residential agriculture land to retail commercial will improve the balance of residential and commercial land within the City. The existing surplus of land designated for single family detached housing, as identified in the Housing Needs Analysis and cited in the applicant's written statement, includes more than enough remaining acreage to accommodate demand for single family residential development after deducting the roughly 24.66 acres that would be removed from the Developing Residential designation under the applicant's proposal. The HNA also indicates a shortage of available land for multifamily housing for the 2015 to 2035 time period. Multiple family housing is not permitted in the existing RA zone and is listed as a conditional (rather than permitted) use in the CR (Retail Commercial) zone requested by the applicant.

Based on the current available supply of land for residential development shown in the Housing Needs Analysis, the proposal would not have an impact on the ability of the City to provide for its projected housing needs, even if no new housing units were added in future development of the site. Therefore, the proposal to change the designation of the subject property to Commercial would not have an impact on the ability of the City to provide for its projected housing needs. The proposal meets the requirements of Goal 10.

Statewide Planning Goal 11 – Public Facilities and Services: *To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

Finding: The City utilizes an Urban Growth Management Program to ensure necessary public facilities and services are available to serve new development. As part of the program, the City has designated an USA boundary delineating the area in the City where all necessary public facilities have either been installed or are fully committed in the adopted Capital Improvement Plan. The Subject Property is located outside the boundary of the USA. However, public services are readily available, as fully described in above. Therefore, all public facilities and services are readily available to serve the Subject Property.

The subject property is capable of being served through extension of public facilities as specified in existing infrastructure master plans. Future development will require an Urban Growth Preliminary Declaration to address linking and boundary facilities required to serve subject property under the standards and requirements of SRC Chapter 200. The applicant submitted a transportation study that is required to address the Transportation Planning Rule (OAR 660-012-0060). The applicant's transportation study identifies seven separate transportation improvements to mitigate the estimated 12,000 new daily trips to the transportation system. One of the mitigation improvements, which is not supported by the Oregon Department of Transportation, cannot be completed without support of Oregon Department of Transportation, who has jurisdiction over the southbound on ramp to I-5.

Oregon Department of Transportation letter dated June 1, 2021 states:

ODOT reviewed the earlier version of the TIA which came to similar conclusions regarding impacts of the zone change request and proportionate shares of necessary improvements. The update TIA provides an appropriate level of analysis and mitigation to address the potential impacts of this proposed rezone.

The mitigation proposed to the Kuebler Boulevard at I-5 SB Ramp intersection (installation of a third southbound right-turn lane on the off-ramp) is the most reasonable mitigation at the intersection and may be expected to acceptably mitigate traffic effects of the proposed zone change and development.

However, as noted in the study, Region 2 Traffic does not currently support this mitigation and does not recommend the installation of a third southbound right-turn lane at the Kuebler

Boulevard at I-5 SB Ramps intersection. In addition, it was found that the applicant's methodology used to determine their proportionate share of mitigation measures to addresses potential significant impacts is appropriate.

The evidence in the record shows there is a significant effect to the I-5 southbound ramp and mitigation outlined would address the significant impact. Based on the Oregon Department of Transportation (ODOT) letter, ODOT does not support the mitigation.

Statewide Planning Goal 12 – Transportation: *To provide and encourage a safe, convenient and economic transportation system.*

Transportation issues were the central point of contention in this proceeding. Potential traffic impacts were the primary focus of most of the public comments and was the sole reason why staff recommended denial.

Before addressing specific arguments raised, the Planning Commission provides the following ultimate conclusion and the guiding principles and conclusions that underly the more detailed analysis provided in the findings below. The Planning Commission concludes that the proposal complies with the Goal 12 rule (the "Transportation Planning Rule" or "TPR" reflected in OAR 660-012-000 et seq., and with the transportation requirements for comprehensive plan designation changes and zone changes set forth by the SRC. Supporting that conclusion and underlying much of the analysis behind specific responses contained in the findings are several main points.

First and perhaps foremost is the Goal 12 "no further degradation" standard for situations where, even in the absence of the proposed comprehensive plan change, the planned transportation facilities will fail by the end of the planning period. That standard is set forth in the Goal 12 Rule at OAR 660-012-0060(3). In such instances, the local government may approve a plan change amendment so long as the development will "mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development[.]" OAR 660-012-0060(3)(b). As noted in the findings above, the City also applies this standard to the analysis for City transportation facilities. If an applicant proposes mitigation that will result in "no further degradation" to a facility that will otherwise not satisfy state or city transportation standards under development allowed by the existing zoning, then under the "no further degradation" principle, that proposal can be approved. In this instance, the Planning Commission finds that the Applicant has made that demonstration and imposes conditions of approval accordingly. The City is better off, or at least no worse off, with CR zone development and the proposed mitigation than it would be with development under the existing RA zoning.

The analysis required to reach the above conclusion leads to the second point – the adequacy and credibility of the Applicant's Transportation Planning Rule Study (TPR Study) and subsequent analysis. The Planning Commission notes that the Oregon Department of Transportation found that the TPR Study provides an appropriate level of analysis and mitigation to address the potential impacts of the proposed rezone and that the Applicant's methodology used to determine its proportionate share of mitigation

measures to address potential significant effects under the Goal 12 rule was appropriate. ODOT identified no shortcomings or deficiencies with Applicant's TPR Study. Given ODOT's authority on such technical matters, its views may carry significant weight in deciding whether the Applicant's evidence is accurate and credible. On that issue, the Planning Commission sides with ODOT and the Applicant's technical expert in this instance and finds that the Applicant's traffic analysis is based on the best available evidence and that the analysis is sound, accurate and credible.

The third underlying point concerns the rigidity of the transportation planning and analysis process. The Planning Commission finds there is some flexibility, when examining potential transportation impacts under the Goal 12 rule or under the City's standards and guidelines. For example, the Oregon Highway Plan (OHP), the authoritative statement on volume to capacity ratios, explains:

"In applying OHP mobility targets to analyze mitigation, ODOT recognizes that there are many variables and levels of uncertainty in calculating volume-to-capacity ratios, particularly over a specified planning horizon. After negotiating reasonable levels of mitigation for actions required under OAR 660-012-0060, ODOT considers calculated values for v/c ratios that are within 0.03 of the adopted target in the OHP to be considered in compliance with the target. The adopted mobility target still applies for determining significant effect under OAR 660-012-0060." OHP, p. 8.

In other words, any v/c ratio that is calculated to be within 3/100ths of a percent (0.03) of the mobility target is deemed to comply with the target. There is flexibility in that approach.

Similarly, ODOT has ruled that traffic counts should not be taken during the pandemic because pandemic traffic behavior is not representative of normal traffic behavior. The pandemic is a "disruptive event" that skews the analysis. There is no dispute that the transportation systems at issue here are still affected by the disruptive COVID event although the extent of that disruption is unclear. Further, there is also no dispute that Staff would not accept traffic counts because 27th Ave has been closed due to construction. This is consistent with the Public Works Design Standards which state that traffic counts "taken during construction shall not be used."¹

The City's transportation regulations include a degree of flexibility and discretion in the application of its provisions. For example, as discussed above under consistency with the Comprehensive Plan, STSP policy 4.6 and 4.7, concerning right-of-way and intersection improvements, both provide for variation from the standard requirements.

With the above in mind, the Planning Commission makes the following findings related to Goal 12

¹ There is no dispute that the Applicant did conduct traffic counts in October 2021 and they showed that there is less traffic on the system than the counts taken or otherwise available immediately before the submittal of the applicant's TPR Study submitted in May 2021.

As noted above, the Planning Commission finds the TPR Study and subsequent transportation system evidence and responses prepared by DKS, the Applicant's transportation expert, to be credible and accurate. The Planning Commission finds the scope of the study to be proper for the application.

The DKS TPR Study collected and analyzed the data for eight (8) existing transportation facilities and one new facility (the 27th Avenue/Project Site Access). The data for most of the existing facilities was taken on May 30 and June 4, 2019. The data for the Commercial Street SE/Kuebler Boulevard facility was collected on February 15, 2017. Two arguments are presented against this data, both focused on PWDS Section 6.33(f)(3), which concerns traffic impact analyses. That standard provides that traffic counts older than two years are not used. The Planning Commission finds that the TPR Transportation Study was dated May 2021 and stamped by a professional engineer. That published date is within 2 years of the date the data was collected. The Planning Commission finds that satisfies the two-year provision regarding traffic counts. The Planning Commission concludes that the 2019 traffic counts are consistent with the PWDS time-frame requirements.

The 2017 traffic count for the Commercial Street SE/Kuebler Boulevard facility is a more complicated matter. On its face, the date lies outside of the two-year window provided in the PWDS for traffic counts. However, these are not ordinary times and there are important factors that weigh towards accepting that data as the most accurate data available. The issue, plainly put, is that more accurate data cannot be collected for the intersection within the reasonably foreseeable future given the pandemic situation, for which ODOT's publication states data should not be collected, and the on-going construction on transportation facilities and other development, for which the PWDS states traffic counts should not be collected and used. ODOT provides guidance for this type of situation – use the most accurate pre-pandemic (“disruptive event”) data available. The PWDS provides no guidance in this situation.

Three primary factors lead the Planning Commission to conclude that the use of the 2017 traffic count is consistent with the TPR and with the PWDS. First, is that the facility at issue is not just a City street, but at certain points, is also a state transportation facility.² For that reason, ODOT's general guidance to use pre-pandemic data as well as ODOT's letter in the record affirming the appropriateness of the Transportation Study's analysis and mitigation proposals is significant.

The Applicant took traffic counts in October 2021. Unsurprisingly, given the current COVID situation on-going construction activity, and the closure of 27th Street SE, the traffic counts and subsequent potential impacts on transportation facilities were greatly reduced. The Applicant's October 2021 counts showed less traffic volume on the affected transportation facilities than the counts relied upon by the Applicant in their TPR Study. The Planning Commission finds that, given the context described above, the data does not reflect normal usage that will flow from the proposal. The Planning Commission agrees with staff and does not base its decision on these latter traffic counts. The Planning Commission finds that the TPR Study from May 2021, the data it relies upon,

² At the particular intersection of Kuebler and Commercial, it is a City street.

and supplemental analysis and proposed mitigation to be the most persuasive reflection of the traffic conditions that will exist during normal times.

Turning to the Transportation Study and the Goal 12 analysis, DKS found potential significant effects to six of the nine facilities studied. As Table 9 of the Transportation Study shows, the three facilities that would continue to operate within design standards were the Kuebler Boulevard/I-5 North Bound Ramp; the Battle Creek Road/Boone Road intersection; and the 27th Avenue/Boone Road intersection. Because there would be a significant effect to the other transportation facilities, the Applicant is required to mitigate the impacts on those facilities consistent with the Goal 12 rule if the application is to be approved. The application and follow-up responses include proposed mitigation.

The Transportation Study's Table 10 shows the study intersections that required mitigation, the standards that mitigation must meet based on either the operational standard for the facility or if it is failing the mobility target under the "no further degradation standard", the proposed mitigation, and the v/c, delay and LOS that will result with the proposed zoning plus mitigation. It demonstrates that the traffic impacts from the proposal with the mitigation proposed by the Applicant and imposed by the conditions of approval, satisfy the TPR requirements.

In summary, one facility, the 27th Avenue/Project Site Access will operate within the designated operating standards with the proposed mitigation. Two facilities, the Kuebler Boulevard/Commercial Street intersection and the Kuebler/I-5 Southbound Ramp require no additional mitigation because the LOS remains the same for the City controlled transportation facility and the V/C, the standard used by ODOT, for both facilities is within the 0.03 range that the Oregon Highway Plan states is in compliance with the target for both of the facilities. Two of the facilities, Kuebler Boulevard/Battle Creek Road and Kuebler Boulevard/27th Avenue, following mitigation, will operate at the same failing LOS as the current zoning and will operate at a V/C ratio lower than the current zoning, thus meeting the "no further degradation" standard. The last intersection, Kuebler Boulevard/36th Avenue, located more than half a mile away on the other side of I-5 from 27th Avenue SE is presently failing and cannot be mitigated by any action taken solely by the Applicant – the traffic issue there requires a greater City effort to widen the bridge over the railroad and Mill Creek to the east. In response, the applicant has offered to contribute its proportional share for the comprehensive improvements necessary to bring that intersection into compliance with City standards. That share is \$118,000.00 based on current estimates. The Planning Commission finds the proposed amount to be accurate, given ODOT's statement that it found the applicant's methodology for determining their proportionate share of mitigation measures was appropriate.

The Applicant has proposed the following mitigation measures, which the Planning Commission imposes as conditions of approval. The Applicant will enter into an Improvement Agreement with the City under which the Applicant shall construct, as mitigation for the transportation impacts generated by the proposed plan designation and zone change, the full mitigation for three facilities and the Applicant's proportionate share for a fourth facility. The facilities the Applicant will construct include: (1) the west bound slip lane (a west bound right turn lane to the roundabout) from the site access onto 27th Avenue SE; (2) improvements to the Kuebler Boulevard and 27th Avenue intersection,

which include installing dual north bound right turn and dual north bound left turn lanes, and changing phasing to protected-only for north bound left and south bound left turns; and (3) the second south bound left turn lane at the intersection of Kuebler Boulevard and Battle Creek Road.

All three mitigation improvements are generally represented in conceptual drawings presented in DKS materials dated December 10, 2021, included in the December 21, 2021 Supplemental Staff Report. Those facilities will be designed and constructed to meet PWDS requirements. The financial mitigation measure imposed as a condition of approval is the deposit of \$118,000.00 to the City of Salem for the Applicant's proportionate share of intersection improvements at Kuebler Boulevard/36th Avenue. Moreover, the Applicant has agreed to a condition that (4) the property will be improved with no more than three drive through window establishments. A single store/restaurant/bank etc. may have more than one drive through feature serving the single establishment and that scenario will count as one drive through window. And has agreed to a condition of approval that (5) No single retail store building shall be composed of more than 70,000 sq. ft. of gross leasable area.

The Planning Commission finds the conditioned mitigation measures, is warranted in order to mitigate for the additional traffic impacts that will flow from the plan designation to Commercial and zone change to CR (Commercial Retail). Such mitigation is necessary for the proposal to be approved under Goal 12 and by the applicable SRC standards for plan designation and zone changes.

Based upon the above findings, the Planning Commission concludes that the proposal, as mitigated by the conditions of approval imposed by this decision, is consistent with Goal 12 and the Transportation Planning Rule, as well as with the transportation-related requirements of the Salem Revised Code.

The following findings address specific concerns presented by Staff in the November 2 and December 21, 2021 Staff Reports that have not already been addressed by these findings.

The issue of weekend counts was raised. However, the PWDS 6.33(f)(2) state that "[t]raffic counts shall be taken on a Tuesday, Wednesday or Thursday that is not a city, state or federal holiday and when K-12 school is in session." The Planning Commission finds that the Applicant's data collection dates comply with that standard.

Staff expressed concerns that the roundabout may be overloaded, however, the DKS analysis included the Costco traffic counts as "in process" in their analysis. The Applicant's traffic numbers incorporate those numbers, thus leading to the proposed mitigation.

Staff raised concerns regarding the number of additional trips the proposed zoning would add to the system and states that the evidence in the record demonstrates that vehicle movements will be greater than 80 seconds, which is inconsistent with standards established in the PWDS. The Planning Commission notes that the sheer number of vehicle trips that would result from a plan designation change/zone change or increase in

vehicle trips is not restricted by any standard so long as the impact from those trips is mitigated. In this case the evidence in the record establishes that it is. The issue is whether the proposal mitigates for the impacts it creates when the intersection exceeds its vehicle movement operational standards under the existing zoning. In this case, for example, Table 9 from the Transportation Study shows that the Kuebler Boulevard/27th Avenue delay under the current zoning is 157.8 and under the unmitigated proposed zoning is greater than 200. However, with mitigation, as shown on Table 10, that delay is reduced to 87.5, well below the 157.8 that will exist without the approval. While that value still exceeds the operational standard, it is an improvement over the current zoning failing operations and satisfies the “no further degradation” standard.

The Planning Commission finds that the DKS transportation system analysis is persuasive and the proposed and conditioned mitigation measures will mitigate the impacts caused by the traffic that will result from development under the proposed plan designation and zoning.

Statewide Planning Goal 13 – Energy Conservation: *To conserve energy.*

Planning Commission Findings: The Planning Commission notes that Goal 13 is another of the goals focused on directives to local governments to do land use planning and provides little of anything regarding standards for specific development other than what the adopted plan and land use regulations should specify. In other words, Goal 13 is implemented through local government land use planning and the application of the plan and code.

That said, the application narrative discusses the central nature of the subject property, which will provide bikeable and walkable commercial shopping and dining opportunities for the near-by residential development. This will reduce energy consumption by motor vehicles. The application also notes that the location of the site along a major bus route will allow for alternative modes of transportation to development on the property.

Such pedestrian and alternative transportation opportunities will help conserve and promote energy efficiency consistent with Goal 13.

Statewide Planning Goal 14 – Urbanization: *To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.*

Finding: The subject property was annexed into the City of Salem in 2011 and is located within the Urban Growth Boundary (UGB). The proposal does not include extension of services to properties outside of the UGB. The proposed Comprehensive Plan and Zone Change is consistent with an orderly and efficient transition from rural to urban use for incorporated land adjacent to major transportation facilities. The proposal complies with Goal 14.

Statewide Planning Goal 15 – Willamette River Greenway; Goal 16 – Estuarine Resources; Goal 17 – Coastal Shorelands; Goal 18 – Beaches and Dunes; and Goal 19 – Ocean Resources:

Findings: Each of the above are geographic specific goals. The Subject Property is not within the Willamette River Greenway, or in an estuary or coastal area. Consequently, Goals 15, 16, 17, 18 and 19 do not impose any requirements to this proposal.

The proposal is consistent with Goals 15 through 19.

SRC 64.025(e)(2)(E): The amendment is in the public interest and would be of general benefit.

Finding: The proposed plan designation change and zone change satisfies an identified need for commercial retail employment-related uses, and proposes to meet that need through changing land designations and zoning for which City studies have demonstrated that the City has an excess of land. The proposal is also consistent with the City's planning program and the City Council's expressed intent to establish commercial services in close proximity to residential neighborhoods. Given the subject property's location along major access routes to the surrounding residential areas and accessibility by alternative means of transportation, the Planning Commission concludes that the proposal is in the public interest and would be of general benefit to the surrounding neighborhoods and to the City generally.

8. QUASI-JUDICIAL ZONE CHANGE APPROVAL CRITERIA

The following analysis addresses the proposed zone change for the subject property from RA (Residential Agriculture) to CR (Retail Commercial).

SRC Chapter 265.005 provides the criteria for approval for Quasi-Judicial Zone Changes. In order to approve a Quasi-Judicial Zone Map amendment request, the review authority shall make findings based on evidence provided by the applicant demonstrating that all the following criteria and factors are satisfied. The extent of the consideration given to the various factors set forth below will depend on the degree of impact of the proposed change, and the greater the impact of a proposal on the area, the greater is the burden on the applicant to demonstrate that, in weighing all the factors, the zone change is appropriate.

The applicable criteria and factors are stated below in **bold** print. Following each criterion is a response and/or finding relative to the amendment requested.

SRC 265.005(e)(1)(A): The zone change is justified based on one or more of the following:

- (i) **A mistake in the application of a land use designation to the property;**
- (ii) **A demonstration that there has been a change in the economic, demographic, or physical character of the vicinity such that the proposed zone would be compatible with the vicinity's development pattern; or**
- (iii) **A demonstration that the proposed zone change is equally or better suited for the property than the existing zone. A proposed zone is equally or better suited than an existing zone if the physical characteristics of the property are appropriate for the proposed zone and the uses allowed by the proposed zone are logical with the surrounding land uses.**

Finding: The request satisfies (ii) and (iii); the proposed zone change is within an area of economic change which makes the proposed zone more compatible with the vicinity development pattern and is equally or better suited for the property than the existing zone. As noted in the applicant's written statement, several properties in the area have been zoned for commercial use or multi-family. The vicinity development pattern has surrounded the subject property leaving an island of residential zoned property. The City has recognized this location as being an appropriate site for commercial development through its adoption of a CR designation for an approximately 32-acre site located at the southwest corner of the 27th Avenue SE / Kuebler Boulevard intersection and an approximately 34-acre site on the northeast corner of 27th Avenue SE / Kuebler Boulevard intersection. The transportation facilities serving the site are consistent with the physical characteristics necessary to support uses allowed in the CR (Commercial Retail) zone.

It must be noted that a zone change is not an approval of a specific development proposal, but instead is approval of a permanent change in a property's zoning district. The proposed Plan Map amendment would change of the land use designation of the subject properties to "Commercial," which can be implemented by multiple zoning districts contained in the Unified Development Code. In evaluating the proposed zone change, the suitability of the specific zone (Commercial Retail) proposed by the applicant must be considered. For this reason, an additional measure of the suitability of this request is consideration of the nature of the potential future uses allowed by the CR zone when compared to the uses allowed under the existing RA zone, and the character of the existing land uses in the neighborhood. As stated previously, the subject property is located within an area largely characterized by holding uses consistent with the "Development Residential" designation.

The Planning Commission notes that participants at the hearing have argued that other zone designations, specifically CO (Commercial Office), MU-I and MU-II (Mixed Use) zones would, in fact, be a better zone for the property given the adjacent residential uses. Similarly, participants have argued that conditions to restrict certain CR-permitted uses, such as drive-through services, would make for an even better fit. The Planning Commission finds that, the issue of fit can be addressed by the following conditions of approval:

Condition 1: The subject property shall not contain more than three uses with drive through.

Condition 2: The subject property shall have no single retail store building that is constructed with more than 70,000 sq. ft.

The Applicant has carried its burden and made that demonstration. The standard does not require that the Applicant demonstrate that the requested zoning is the best or most ideal zoning for the property, only that it is either compatible with the vicinity's development pattern or better suited than the existing pattern.

SRC 265.005(e)(1)(B): If the zone change is City-initiated, and the change is for other than City-owned property, the zone change is in the public interest and would be of general benefit.

Finding: The proposal is not a City-initiated zone change. This criterion does not apply.

SRC 265.005(e)(1)(C): The zone change complies with the applicable provisions of the Salem Area Comprehensive Plan.

Finding: Findings addressing the minor comprehensive plan map criterion SRC 64.025(e)(2)(D), included above in this report, address the applicable provisions of the Salem Area Comprehensive Plan for this consolidated application. The proposal satisfies this criterion.

SRC 265.005(e)(1)(D): The zone change complies with applicable Statewide Planning Goals and applicable administrative rules adopted by the Department of Land Conservation and Development.

Finding: Similar to the response to conforming with applicable provisions of the Salem Area Comprehensive Plan, the findings above for Comprehensive Plan Change criterion SRC 64.025(e)(2)(D), addressing compliance with the Statewide Planning Goals and administrative rules, also included discussions of the requested CR commercial retail zoning where additional response based upon the zoning is warranted. Examples include the responses for Goal 9 and Goal 10. Other than those instances where the zoning is discussed specifically, the responses for Goal and rule compliance for zoning mirror the response for the requested Commercial plan designation. Therefore, the responses above for SRC 64.025(e)(2)(D) are hereby incorporated. Given that the requested CR zoning implements the Commercial plan designation, and this is a consolidated comprehensive plan change and zone change request, the analysis and conclusions for both applications is the same.

SRC 265.005(e)(1)(E): If the zone change requires a comprehensive plan change from an industrial designation to a non-industrial designation, or from a commercial or employment designation to any other use designation, a demonstration that the proposed zone change is consistent with the most recent economic opportunities analysis and the parts of the Comprehensive Plan which address the provision of land for economic development and employment growth; or be accompanied by an amendment to the Comprehensive Plan to address the proposed zone change; or include both the demonstration and an amendment to the Comprehensive Plan.

Finding: The proposed zone change is from RA (Residential Agriculture) to CR (Retail Commercial). No industrial Comprehensive Plan designations or zoning districts are involved in the proposal. The existing designation is not a commercial or employment designation.

Therefore, this criterion does not apply.

SRC 265.005(e)(1)(F): The zone change does not significantly affect a transportation facility, or, if the zone change would significantly affect a transportation facility, the significant effects can be adequately addressed through the measures associated with, or conditions imposed on, the zone change.

Finding: This zone change standard substantively requires an analysis similar to Goal 12's Transportation Planning Rule. It uses identical wording and lays out the same standard, which allows for mitigation of transportation impacts when a significant affect to a transportation facility is found. In short, it implements Goal 12 and must be interpreted and applied consistently with Goal 12. The inter-relatedness of Goal 12 and the City's transportation-related requirements, whether expressed in the Comprehensive Plan, the SRC or the PWDS, is further demonstrated through the staff report comments which move freely from discussion of the TPR to City standards and back again. For that reason, the findings for Goal 12 above freely address the City traffic standards and issues in its analysis. Those Goal 12 findings are relevant here and are hereby incorporated in response to this standard.

Furthermore, many of the staff comments pertaining to City transportation standards were also addressed in response to whether the proposal is consistent with Comprehensive Plan goals and policies as well as with the STSP. Those responses are also herein incorporated.

To summarize the findings provided under Goal 12 and under relevant Comprehensive Plan and TSP provisions, the Planning Commission finds that the evidence and analysis submitted by DKS to be credible, as did ODOT. That analysis found that the plan designation change and zone change would lead to development that could cause a significant affect to some transportation facilities, most of which would fail anyway under the existing zoning even without the proposal. For the one that does not now fail - the site access to the subject property from the 27th Ave. round-about, the proposed mitigations ensure that the roundabout will meet City operating standards once constructed. The DKS analyses also demonstrate that the significant effects that would flow from the proposed plan designation and zone change that are greater than those that would occur from the existing zoning, are mitigated by the proposed mitigations imposed as conditions of approval such that transportation facilities would function within their operational standards or, if they already would have failed, there would be no further degradation of the transportation facility. That is what this criterion requires.

Condition 3: Mitigation as detailed in the Transportation Planning Rule analysis shall be completed as follows:

- *Battle Creek Road SE at Kuebler Boulevard SE –*
 - Construct a second southbound left turn lane on the Battle Creek Road SE approach.
- *27th Avenue SE at Kuebler Boulevard SE –*
 - Construct a second northbound right turn lane on 27th Avenue SE. The additional right turn lane shall extend from the site at the roundabout to the intersection with Kuebler. The signal shall be modified to accommodate the right turn lanes and splitter island.
 - Construct a second northbound left turn lane on 27th Avenue SE. The additional left turn land shall extend from the roundabout to the intersection with Kuebler Boulevard SE. The signal shall be modified to accommodate the two left turn lanes.

- Extend the westbound left turn lanes on Kuebler Boulevard to provide 600 feet of vehicle queueing in each lane.
- Additional widening, improvements, and signal modifications will be required on the north leg of 27th Avenue to ensure proper lane alignment and safe operation at the intersection.
- *36th Avenue SE at Kuebler Boulevard SE –*
 - Construct a westbound right turn lane on Kuebler Boulevard SE at the intersection with 36th Avenue SE. The right turn lane shall provide for 100 feet of vehicle storage. Modify the traffic signal as required to construct the improvements.

The above findings demonstrate that the proposal satisfies this criterion.

The proposal meets this criterion.

SRC 265.005(e)(1)(G): The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed zone.

Finding: Findings addressing the Comprehensive Plan Change criterion SRC 64.025(e)(2)(B), included above in this report, address the public facilities and services available to support residential uses allowed on the subject property as a result of the proposed zone change. The proposal satisfies this criterion.

SRC 265.005(e)(2) The greater the impact of the proposed zone change on the area, the greater the burden on the applicant to demonstrate that the criteria are satisfied.

Findings: The Planning Commission finds that the level of information provided in application addressing the factors listed under SRC Chapter 265.005(e) corresponds to the anticipated impact of the zone change proposal. The Planning Commission notes in particular the transportation impact evidence prepared and submitted by the applicant's expert. That evidence is extensive, responsive to the issues raised by public works and ODOT and demonstrates that the potential adverse impacts that could flow from the consolidated plan designation and zone change application will be mitigated by the Applicant. That evidence is also responsive to comments submitted by neighbors and neighborhood associations that focused almost entirely on the potential impacts that could flow from increased automobile use of the property that the proposal would allow.

The proposal satisfies this criterion.

CONCLUSION

Based on the facts and findings presented herein, the Planning Commission concludes the proposed Minor Comprehensive Plan Map Amendment and Zone Change, for property located at the southwest corner of the intersection of Kuebler Boulevard and I-5, satisfy the applicable criteria contained under SRC 64.025(e)(2) and SRC 265.005(e)(1) for approval subject to the

following conditions of approval:

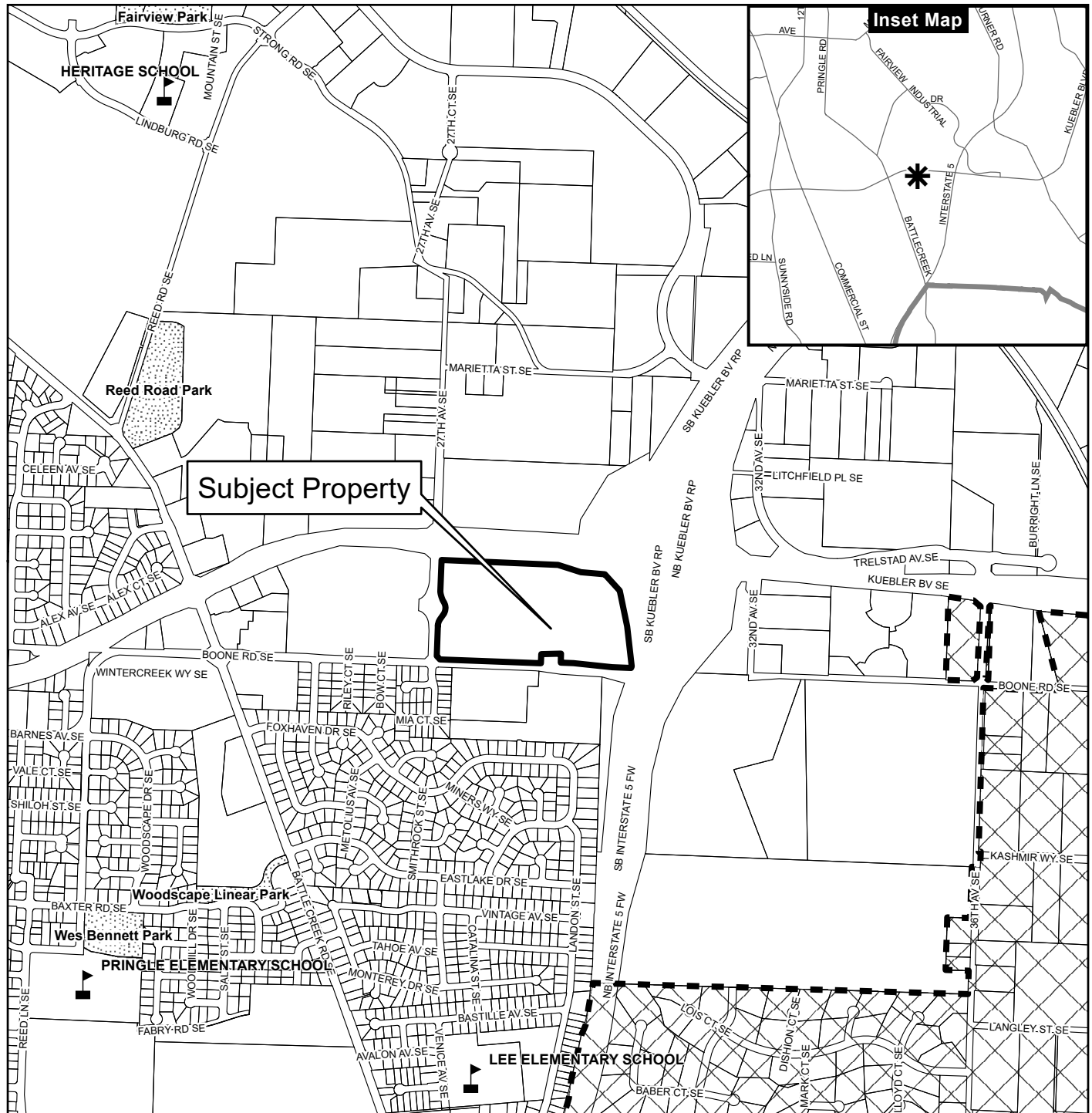
- Condition 1:** The subject property shall not contain more than three uses with drive through.
- Condition 2:** The subject property shall have no single retail store building that is constructed with more than 70,000 sq. ft.
- Condition 3:** Mitigation as detailed in the Transportation Planning Rule analysis shall be completed as follows:
- *Battle Creek Road SE at Kuebler Boulevard SE –*
 - Construct a second southbound left turn lane on the Battle Creek Road SE approach.
 - *27th Avenue SE at Kuebler Boulevard SE –*
 - Construct a second northbound right turn lane on 27th Avenue SE. The additional right turn lane shall extend from the site at the roundabout to the intersection with Kuebler. The signal shall be modified to accommodate the right turn lanes and splitter island.
 - Construct a second northbound left turn lane on 27th Avenue SE. The additional left turn lane shall extend from the roundabout to the intersection with Kuebler Boulevard SE. The signal shall be modified to accommodate the two left turn lanes.
 - Extend the westbound left turn lanes on Kuebler Boulevard to provide 600 feet of vehicle queueing in each lane.
 - Additional widening, improvements, and signal modifications will be required on the north leg of 27th Avenue to ensure proper lane alignment and safe operation at the intersection.
 - *36th Avenue SE at Kuebler Boulevard SE –*
 - Construct a westbound right turn lane on Kuebler Boulevard SE at the intersection with 36th Avenue SE. The right turn lane shall provide for 100 feet of vehicle storage. Modify the traffic signal as required to construct the improvements.

Attachments: A. Vicinity Map, Comprehensive Plan Map and Zoning Map

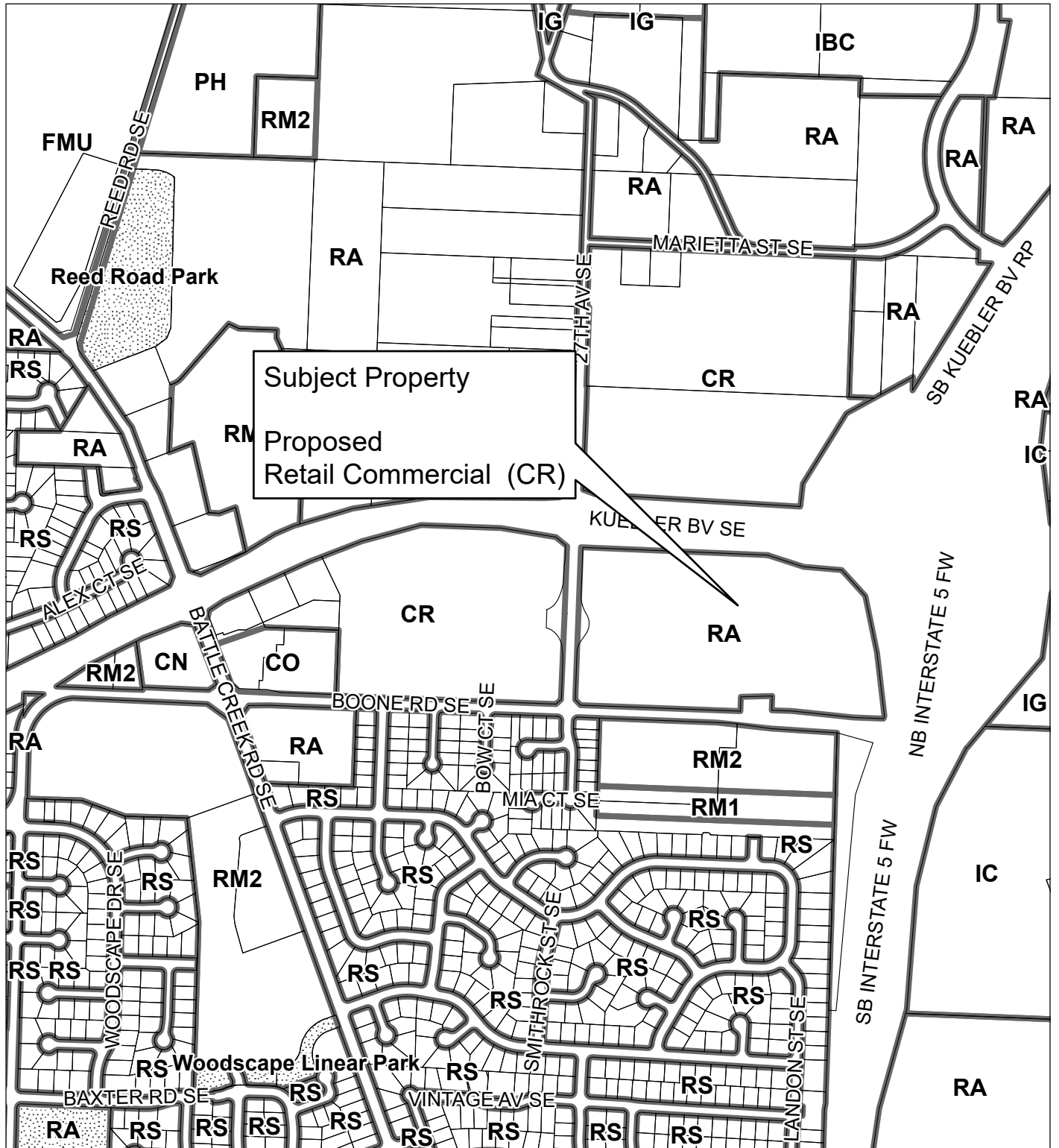
Prepared by Olivia Dias, Current Planning Manager

Vicinity Map

2900 Block Kuebler BLVD SE



PROPOSED ZONING MAP CHANGE



Legend

- | | |
|---------------------------|---------|
| Base Zoning | Taxlots |
| Urban Growth Boundary | Parks |
| Outside Salem City Limits | Schools |

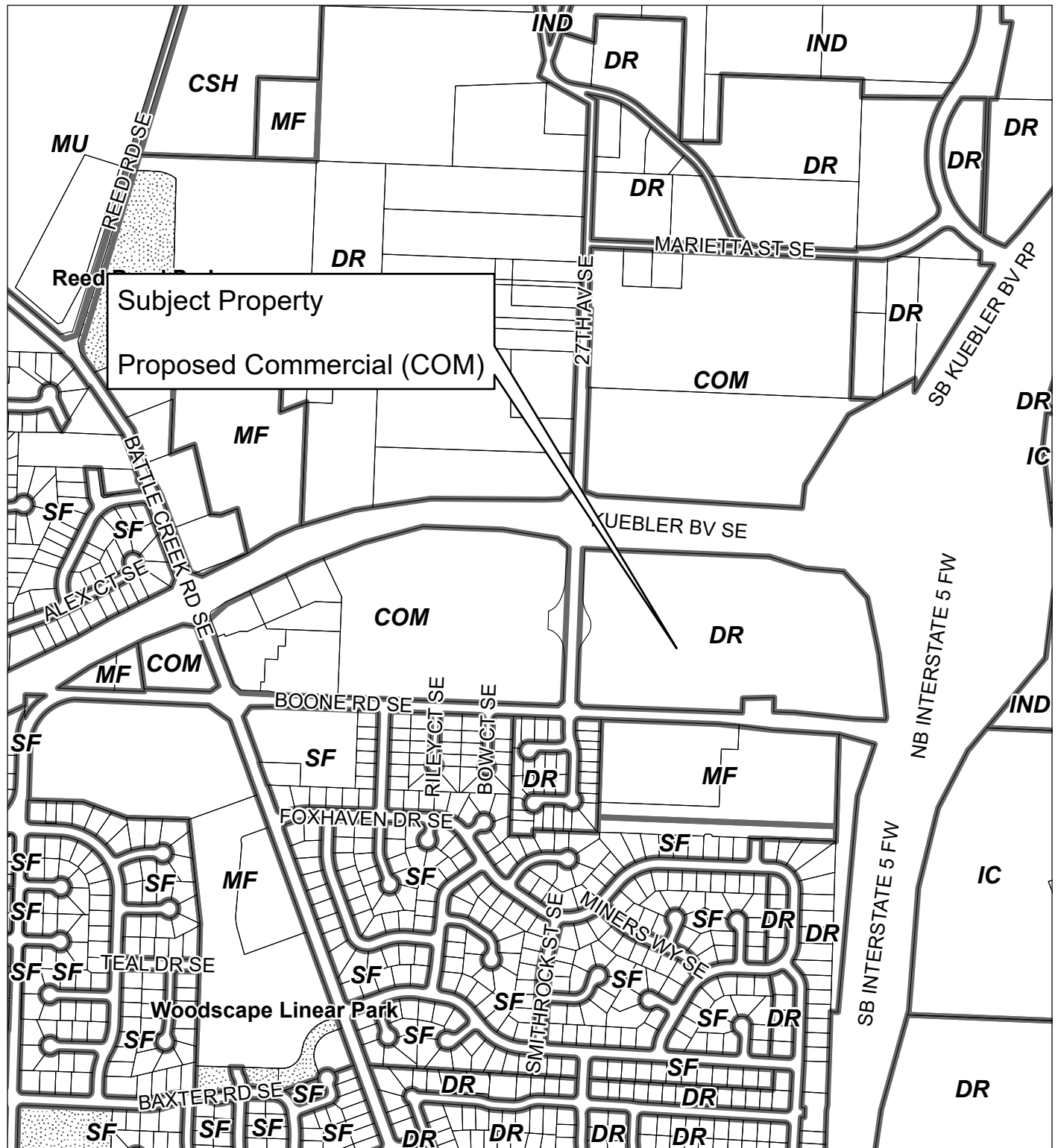
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CITY OF *Salem*
AT YOUR SERVICE
Community Development Dept.

PROPOSED COMPREHENSIVE PLAN CHANGE



Legend

- | | |
|---------------------------|---------|
| Comprehensive Plan | Taxlots |
| Urban Growth Boundary | Parks |
| Outside Salem City Limits | Schools |

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CITY OF *Salem*
AT YOUR SERVICE
Community Development Dept.

FOR MEETING OF: NOVEMBER 2, 2021
AGENDA ITEM NO.: 5.1

TO: PLANNING COMMISSION

**FROM: LISA ANDERSON-OGILVIE, AICP
DEPUTY COMMUNITY DEVELOPMENT DIRECTOR AND
PLANNING ADMINISTRATOR**

**SUBJECT: MINOR COMPREHENSIVE PLAN MAP AMENDMENT & ZONE CHANGE
CASE NO. CPC-ZC21-04; FOR PROPERTY LOCATED AT 2900 BLOCK OF
KUEBLER BLVD SE (AMANDA APPLICATION NO. 21-115803-ZO; 21-
115805-ZO)**

REQUEST

The applicant proposes to change the Comprehensive Plan Map designation and zoning from “Single Family Residential” with RA (Residential Agriculture) zoning to “Commercial” with CR (Retail Commercial) zoning. The subject property is approximately 24.66 acres in size, zoned RA (Residential Agriculture) and located at the southwest corner of the intersection of Kuebler Boulevard and I-5 (Marion County Assessor Map and Tax Lot Number: 083W12C / 2201).

APPLICANT: Doug Sproul, Boone Road Commercial LLC

OWNER: Kuebler Cascade View LLC (Thomas Wettlaufer, Gordon Satrum, Dirk Stangier)

REPRESENTATIVE: Mark Shipman, Saalfeld Griggs Lawyers

RECOMMENDATION

DENY Comprehensive Plan Map Change & Zone Change, Case No. 21.04.

APPLICATION PROCESSING

Subject Application

On August 25, 2021, Mark Shipman of Saalfeld Griggs PC, on behalf of Boone Road Commercial LLC, filed an application for a Comprehensive Plan Change and Zone Change to change the Comprehensive Plan Map designation of the subject property from Developing Residential to Commercial and to change the zoning from RA (Residential Agriculture) to CR (Retail Commercial). The application was deemed complete for processing on September 23, 2021. The public hearing on the application is scheduled for November 2, 2021.

120-Day Requirement

Amendments to an acknowledged Comprehensive Plan are not subject to the 120-day rule (Oregon Revised Statutes [ORS] 227.128).

BACKGROUND INFORMATION

Proposal

The applicant is requesting to change the zoning of the subject property from RA (Residential Agriculture) to CR (Retail Commercial). The zone change also requires an amendment to the Salem Area Comprehensive Plan (SACP) Map to change the comprehensive plan designation from "Developing Residential" to "Commercial," a designation which is implemented by the CR zone.

The proposal requires the following land use approvals:

- 1) A Minor Comprehensive Plan Map Amendment to change the Comprehensive Plan Map designation of the subject property from "Developing Residential" to "Commercial."
- 2) A Quasi-Judicial Zone Change to change the zoning of the subject property from RA (Residential Agriculture) to CR (Retail Commercial).

The applicant's written statements summarizing each request and addressing compliance with the required approval criteria can be found linked here within the [submitted land use application](#).

Existing Site Conditions

The subject site consists of four adjoining rectangular lots totaling 24.66 acres in size (Marion County Assessor's Map and Tax Lot Number 083W12C / 2201). The subject property is primarily undeveloped. The subject property slopes downward from a high point of approximately 380 feet above mean sea level (AMSL) along the south property line to approximately 298 feet AMSL at the east property line and approximately 312 AMSL at the north property line.

Salem Area Comprehensive Plan (SACP) Designation

The Salem Area Comprehensive Plan (SACP) map designates the subject property as "Developing Residential."

The Comprehensive Plan designations of surrounding properties include:

- North: (Across Kuebler Boulevard SE) "Commercial"
- South: (Across Boone Road SE) "Developing Residential" and "Multiple Family"
- East: Right-of-way for Interstate 5
- West: (Across 27th Avenue SE) "Commercial"

Components of the Comprehensive Plan

The Salem Area Comprehensive Plan is the long-range plan for guiding development in the Salem urban area. The overall goal of the plan is to accommodate development in a timely, orderly, and efficient arrangement of land uses and public facilities and services that meets the needs of present and future residents of the Salem urban area. Many different documents and maps, when taken together, comprise the Salem Area Comprehensive Plan.

Salem Transportation System Plan (TSP): The TSP uses a Street Classification System to determine the functional classification of each street within the City's street system. The subject property is abutted by designated collector street to the west (27th Avenue SE). Kuebler Boulevard SE, a designated parkway, runs along the north property boundary. Right-of-way for the Interstate 5 freeway and interchange ramps form part of the eastern boundary of the site.

Neighborhood Plan: The subject property is within the boundary of the Southgate Neighborhood Association (SGNA), which does not have an adopted neighborhood plan.

Zoning

The subject property is zoned RA (Residential Agriculture). Surrounding properties are zoned as follows:

North: (Across Kuebler Boulevard SE) CR (Retail Commercial)

South: (Across 27th Avenue SE) RA (Residential Agriculture) and RM-II (Multiple Family Residential)

East: Right-of-way for Interstate 5

West: (Across 27th Avenue SE) CR (Retail Commercial)

Relationship to the Urban Service Area

The subject property is located outside of the City's Urban Service Area. Pursuant to the Urban Growth Management requirements contained under SRC Chapter 200, an Urban Growth Preliminary Declaration is required. An Urban Growth Preliminary Declaration application was previously approved (UGA09-08) and is now expired.

Land Use History

Comprehensive Plan Change/ Zoning Change (CPC/ZC 93-15); A joint Annexation, Comprehensive Map Change and Zone Change. (Not approved by voters, Expired)

Annexation Case (ANXC-688); Annexation of subject property effective April 4, 2011.

Urban Growth Preliminary Declaration (UGA09-08); A UGA Development permit for approximately 40 acres (subject property and property south of Boone Road) to determine public facilities required for the properties.

Public and Private Agency Review

Salem Public Works Department – The Public Works Department, Development Services Section, reviewed the proposal and submitted comments (Attachment C).

Salem Fire Department – The Salem Fire Department submitted comments indicating that they have no concerns with the request.

Salem Building and Safety Division – The Building and Safety Division has reviewed the proposal and indicated no concerns.

Oregon Department of Land Conservation and Development (DLCD) – No comments received.

Cherriots – Cherriots commented that two stops should be provided to facilitate the expansion of the existing public transportation routes. The applicant and Cherriots discussed providing stops on the proposed north-south street shown on (Attachment E) south of the round-about.

Neighborhood Association and Public Comments

The subject property is located within the boundaries of the South Gateway Neighborhood Association. The property is adjacent to the Morningside Neighborhood Association (across Kuebler Boulevard SE) and Southeast Mill Creek Association (SEMCA) (across Interstate – 5).

Required Open House/Neighborhood Association Meeting. Prior to application submittal, SRC 300.320 requires the applicant for a proposed minor amendment to the City's comprehensive plan map to either arrange and conduct an open house or present their proposal at a regularly scheduled meeting of the neighborhood association the property is located within. On June 10, 2021, the applicant's representative attended the Northgate Neighborhood Association meeting, held virtually, to present their proposal. A summary of the comments provided at the neighborhood association meeting (Attachment B).

Neighborhood Association Comment

The City provided a notice of filing and request for comments to the South Gateway Neighborhood Association, Morningside Neighborhood Association and Southeast Mill Creek Association (SEMCA) pursuant to SRC 300.620(b)(2)(B)(v), which requires notice to be sent to any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property.

Comments were received from the South Gateway Neighborhood Association indicating opposition to the proposal. South Gateway indicated Mixed Use (MU-I or MU-II) would be better suited for the subject property. South Gateway and four surrounding property owners indicate that traffic is a concern due to the new Costco building being constructed and that the addition of a drive-thru to the area could be detrimental to the traffic system. (Attachment D)

Staff Response: The application is recommended to be denied due to an inadequate Transportation Planning Rule analysis and inadequate proposed traffic mitigation. The

applicant has not requested MU-I or MU-II, which have not been evaluated as part of this application.

Public Comment

Notice was also provided, pursuant to SRC 300.620(b)(2)(B)(iii), (vi), & (vii), to all property owners and tenants within 250 feet of the subject property. Posted notice signs for the public hearing were placed visible from each street frontage of the subject property and remained in place through the day of the public hearing as required by SRC 300.620(b)(3).

As of the date of completion of this staff report no public comments have been received.

Homeowners Association

The subject property is not located within a Homeowners Association.

Oregon Department of Land Conservation and Development (DLCD) Notice

State law (ORS 197.610) and SRC 300.602(b)(1) require the City to provide the Oregon Department of Land Conservation and Development (DLCD) a minimum 35-day notice when an applicant or the City proposes an amendment to an acknowledged Comprehensive Plan or land use regulation or to adopt a new land use regulation. The City sent notice of this proposal to DLCD on September 24, 2021.

Site Plan

A site plan is not required as part of a Comprehensive Plan Map Amendment/Zone Change application. The applicant submitted a conceptual plan indicating commercial retail, lodging, mixed use, office and residential uses on the property. Transportation Planning Rule analysis submittal includes preliminary site plans with a shopping center contained in several areas and uses on the subject property. Although the site plan illustrates how the site could be developed under the proposed Comprehensive Plan Map designation and zoning, the applicant has not requested development approval as part of the subject application.

Applicant Submittal Information:

Requests for Minor Comprehensive Plan Changes and zone changes must include a statement addressing each applicable approval criterion and standard. The applicant submitted such statements and proof, which are included in their entirety as Attachment B to this staff report. Staff utilized the information from the applicant's statements to evaluate the applicant's proposal and to compose the facts and findings within the staff report.

1. FINDINGS APPLYING THE APPLICABLE SALEM REVISED CODE CRITERIA FOR A COMPREHENSIVE PLAN AMENDMENT

Salem Revised Code (SRC) 64.025(e)(2) establishes the approval criteria for Comprehensive Plan Map amendments. In order to approve a quasi-judicial Plan Map amendment request, the decision-making authority shall make findings of fact based on evidence provided by the applicant that demonstrates satisfaction of all of the applicable criteria. The applicable criteria

are shown below in **bold** print. Following each criterion is a finding relative to the amendment requested.

SRC 64.025(e)(2)(A): The Minor Plan Map Amendment is justified based on the existence of one of the following:

- (i) ***Alteration in Circumstances.*** Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate.
- (ii) ***Equally or Better Suited Designation.*** A demonstration that the proposed designation is equally or better suited for the property than the existing designation.
- (iii) ***Conflict Between Comprehensive Plan Map Designation and Zone Designation.*** A Minor Plan Map Amendment may be granted where there is conflict between the Comprehensive Plan Map designation and the zoning of the property, and the zoning designation is a more appropriate designation for the property than the Comprehensive Plan Map designation. In determining whether the zoning designation is the more appropriate designation, the following factors shall be considered:
 - (aa) **Whether there was a mistake in the application of a land use designation to the property;**
 - (bb) **Whether the physical characteristics of the property are better suited to the uses in the zone as opposed to the uses permitted by the Comprehensive Plan Map designation;**
 - (cc) **Whether the property has been developed for uses that are incompatible with the Comprehensive Plan Map designation; and**
 - (dd) **Whether the Comprehensive Plan Map designation is compatible with the surrounding Comprehensive Plan Map designations.**

Applicant Statement: Since the annexation of the subject property, the properties in the surrounding area have undergone significant economic change. The property west of the subject property was re-zoned to CR (Retail Commercial) and CO (Commercial Office). The property north of the subject property was rezoned to CR in March of 2016 and the property south of the subject property has been rezoned to multiple family residential and developed as an assisted living facility. In addition, East of Interstate 5 properties have developed to accommodate various commercial uses including Oregon State Police Headquarters, Parks and Recreation Facility, Amazon Distribution and other facilities that make Kuebler an important commercial corridor. The change in the area has been acknowledged by the City's 'Our Salem' proposed map, which designates the property as 'Commercial'

The Commercial plan designation is equally or better suited for the subject property than the Developing Residential designation. The primary goal of the Commercial designation is to maintain and promote of the City's as a commercial center for Marion-Polk Counties. The location of the subject property, as well as the surrounding uses, makes it well-suited for

Commercial designation. The location adjacent to I-5, and possibly being developed into a retail center would promote Salem as a regional commercial center as well as provide the area with a broader range of employment uses. The commercial development is likely to provide the opportunity for commercial offices, including medical offices, which provide higher than average wage jobs. Salem Economic Opportunities Analysis p. 28; as well as retail services and sales jobs.

Staff Response: The proposal is justified based on (ii); Alteration in Circumstances. Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate and (iii); the proposed designation is equally or better suited for the property than the existing designation. The applicant does not assert that a mistake has been made in the application of the Developing Residential designation to the subject property. Staff concurs with the applicant's characterization of the Developing Residential designation as appropriate for holding areas for future development not currently served by urban levels of infrastructure. The Urban Growth Preliminary Declaration issued for the subject property (UGA09-08) specified the infrastructure improvements needed to develop the subject property as a 26.44-acre shopping center. The Urban Growth Preliminary Declaration has expired and the applicant would need to re-apply to determine current infrastructure improvements needed to develop the property. The subject property provides a site for higher intensity retail development that would maximize investment in public services in the vicinity, especially the existing arterial street network and future master-planned utilities.

In 2015, the City completed an Economic Opportunities Analysis (EOA) for areas within the Salem Urban Growth Boundary for the years 2015 to 2035. The study indicated a shortage of approximately 100 gross acres of retail commercial land within the Salem UGB. Conversely, the accompanying Housing Needs Analysis (HNA) indicated a large surplus of available land for single family detached housing, primarily consisting of lands within the "Single Family Residential" and "Developing Residential" designations.

Several factors make the subject property especially well-suited for the Commercial designation. The subject property has direct access to a collector (27th Avenue SE), local road (Boone Road SE), frontage on a designated parkway (Kuebler Boulevard SE), and close proximity to a major freeway interchange at Kuebler Boulevard and I-5. The site is located across 27th Avenue from a 32-acre site in which a Plan Map and zone change from Developing Residential with RA zoning to a Commercial designation with CR zoning was approved in 2006 (CPC-ZC06-06) and across Kuebler Boulevard from a 31.96 acre site in which also had a Plan Map and zone change from Developing Residential with RA zoning to a Commercial designation with CR zoning in 2016.

The higher classification streets in the vicinity provide sufficient access for commercial uses, particularly those with a regional customer base. Further, the majority of surplus developable acreage identified in the HNA is not benefitted by the confluence of freeway, parkway, and arterial network access that help make the subject property especially well-suited to commercial development. Considering these factors the subject property is equally or better suited for the proposed designation than its current designation.

The proposal meets this criterion.

SRC 64.025(e)(2)(B): The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed plan map designation;

Applicant Statement: The subject property is located outside of the City's Urban Service Area (USA). However, the subject property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed Commercial designation.

Natural gas, sanitary services, water, and power lines are located within Boone Road SE. Sanitary, power, and natural gas service lines are also available along 27th Street SE. Storm drain infrastructure is available in Kuebler Blvd.

There is an existing 24" public sanitary line located in 27th Avenue SE with manholes approximately mid-way along the front and at the intersection of Kuebler Blvd. that are deep enough to service this property. There is also an eight (8") inch PVC sewer main located within Boone Road SE east of the Boone Road SE and 27th Avenue SE intersection; however due to topographic constraints it will not be able to service the Subject Property.

There is an existing 24" and 30" S2 water line in Boone Road SE. The Subject Property is within two water service levels: S-1 and S-2. There are no facilities available to serve the S-1 water service level at this time. However, a twenty-four (24") inch S-2 ductile iron water main is located in Boone Road SE and a thirty (30") inch S-2 ductile iron water main is located in Boone Road SE. Applicant could connect to the line with a temporary connection agreement with City of Salem, as no S-1 service is available.

There is an overhead power, cable, and telecom line along the north side of Boone Road SE and along the east side of 27th Avenue there is an existing gas main in Boone Road SE along the north side of the road and along 27th Avenue on the east side of the road.

The majority of the Subject Property currently drains to the center of the property where it and then flows north to the existing drainage ditch that flows east to an existing 36" storm drain that crosses north under Kuebler Blvd. The eastern fifth of the project flows east to the I-5 ditches and culverts.

Staff Response: The applicant will be required to apply for an Urban Growth Preliminary Declaration permit prior to development. The permit will identify those public facilities that must be constructed in order to fully serve a shopping center on the subject property consistent with the City's adopted Master Plans and Area Facilities Plans. As indicated in the comments from the Public Works Department (Attachment C), streets, water, sewer, and storm water facilities are available to serve the subject property. Site-specific infrastructure requirements will be addressed in the Site Plan Review process in SRC Chapter 220. The proposal meets this criterion.

SRC 64.025(e)(2)(C): The proposed plan map designation provides for the logical urbanization of land;

Applicant Statement: As addressed above, the development pattern in the vicinity, particularly this segment of the Kuebler corridor, has transitioned over the past several years, shifting from rural residential uses to uses that are primarily commercial in nature. The proposed plan map designation is consistent with the current development pattern and will provide for the logical urbanization of land. The plan change to the Commercial designation will support the City's proposed change of status of the Subject Property through the Our Salem planning process.

Staff Response: The immediate vicinity of the subject property is in flux with commercial development to the west (Costco), multi-family and single family developments to the south, commercially zoned property to the north along with a 177-lot single family development and possible Multi-Family development to the northwest of the property. The subject property sits near the center of a large area of future commercial and residential (multiple family) development. A Commercial Plan Map designation would be consistent with the surrounding area of Commercial designations, and the mixture of land uses that have developed according to that designation. The City is proposing to change the Comprehensive Plan map designation of the Subject Property to Commercial through the *Our Salem* planning process, however, the City's proposal is for CO (Commercial Office) zoning, due in part to transportation system impacts associated with changing the zoning to CR (Commercial Retail). The *Our Salem* proposal is expected to go through a public hearing process in spring of 2022 and is not final until adoption by City Council.

Staff finds that the proposal meets this criterion.

SRC 64.025(e)(2)(D): The proposed land use designation is consistent with the Salem Area Comprehensive Plan and applicable Statewide planning goals and administrative rules adopted by the Department of Land Conservation and Development; and

Staff Response: The applicable Goals and Policies of the Comprehensive Plan are addressed as follows:

Salem Urban Area Goals and Policies, Growth Management Goal (Page 28, Salem Comprehensive Policies Plan):

To manage the growth in the Salem urban area through cooperative efforts of the City of Salem and Marion and Polk Counties, to insure the quality of life of present and future residents of the area, and to contain urban development to preserve adjacent farm land.

Staff Response: The public facilities and service needs for the subject property would be provided at the time of development of the site. All public services and utilities are available in the vicinity of the subject property including water, sewer, storm drainage, streets, sidewalks, fire and police protection, electricity, telecommunications, and solid waste disposal. The proposed Comprehensive Plan Map amendment with concurrent Zone Change is consistent with these policies. Master-planned facilities necessary to support development of a shopping center on the subject property will be evaluated through a Urban Growth Preliminary Declaration.

Salem Urban Area Goals and Policies, Commercial Development Goal (Page 35, Salem Comprehensive Policies Plan):

To maintain and promote the Salem urban area as a commercial center for the Marion-Polk County metropolitan area.

Staff Response: The proposed commercial designation of the subject property would allow development of a mixed use development or shopping center serving the southeastern portion of the Marion-Polk County metropolitan area. Existing commercial concentrations elsewhere in the region, such as downtown Salem, the Commercial Street SE corridor, and Lancaster Drive are a considerable distance from existing and future development in the southeastern portion of the metropolitan area. Transportation access to the subject property would promote use of a site within the Salem urban area as the commercial center for underserved areas inside and outside of the City limits.

Policy G.4. Community shopping and service facilities shall be located adjacent to major arterials and shall provide adequate parking and service areas. Land use regulations shall include provisions for siting and development which discourage major customer traffic from outside the immediate neighborhoods from filtering through residential streets.

Staff Response: The subject property is well-served by the street network in the vicinity, which includes collectors, Kuebler Boulevard, and the adjacent I-5 freeway interchange. As surrounding properties develop, the existing network of higher-classification streets will allow regional traffic to access the site without filtering through neighborhood residential streets.

Policy G.5. Unless the existing development pattern along arterials and collectors commits an area to strip development, new commercial development shall be clustered and located to provide convenience goods and services for neighborhood residents or a wide variety of goods and services for a market area of several neighborhoods.

Staff Response: The proposed Commercial designation of the site would facilitate clustered retail development at one quadrant of the I-5/Kuebler Boulevard interchange, allowing a wide variety of goods and services to be provided in a location where existing transportation facilities provide access from several different neighborhoods.

Finding: The applicable Statewide Planning Goals are addressed as follows:

Statewide Planning Goal 1 – Citizen Involvement: *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

Staff Response: On June 10, 2021, the applicant's representative attended the Southeast Salem Neighborhood Association Meeting, held virtually, to present their proposal. A public hearing notice was mailed to the affected property owners, all property owners within 250 feet

of the subject property, to the South Gateway Neighborhood Association and to the adjacent Southeast Mill Creek Association and Morningside Neighborhood Association. The applicant posted the subject property prior to the public hearing. This satisfies Citizen Involvement described in Goal 1.

Statewide Planning Goal 2 – Land Use Planning: *To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

Staff Response: The City has complied with the Goal requirements for establishing and maintaining a land use planning process. The Oregon Land Conservation and Development Commission have acknowledged the Salem Area Comprehensive Plan to be in compliance with the Statewide Planning Goals.

Statewide Planning Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources: *To protect natural resources and conserve scenic and historic areas and open spaces.*

Staff Response: There are possible scenic, historic, or cultural resources on the subject property. Prior to development, the property owner would need to consult with the City Historic Preservation Program Manager. According to the Salem Keizer Local Wetland Inventory (LWI) there are wetlands mapped on the subject property. The applicant has provided a wetland delineation as part of their application. The City's wetland ordinance, SRC Chapter, requires notice and permitting through the Department of State Lands (DSL).

The application will be reviewed for compliance with the City's tree preservation ordinance and any applicable wetland standards at the time of development. Staff finds that the proposal is consistent with Goal 5.

Statewide Planning Goal 9 – Economic Development: *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

Applicant Statement: The City's Comprehensive Plan contains commercial and economic development policies pertaining to the identification and protection of employment lands. This proposal to amend the comprehensive plan map from Developing Residential to Commercial will increase the City's employment lands, as the change will allow for the development of commercial uses on the Subject Property. The proposal will provide a site for a community level retail center. This consolidated land use proposal increases economic opportunities for City residents. As such, this proposal is consistent with Goal 9's requirement to provide a variety of economic opportunities for City residents, including commercial opportunities. (OAR 660-009-0000).

Staff Response: The proposed comprehensive plan and zoning map amendment will convert approximately 24.66 acres of vacant residentially-zoned land to a commercial designation. Consistent with the City's obligations to provide economic opportunities under Goal 9, per OAR 660-009-0015, an Economic Opportunity Analysis (EOA) was conducted by ECONorthwest and adopted by City Council in October 2014. Consistent with economic

development protections of Goal 9 and the objectives of understanding the opportunities for the next 20 years, the report compared the supply of suitable buildable commercial land (298 acres) to the projected demand (569 acres) and concluded that there is a deficiency of 271 acres of commercial land to meet the 20-year growth demand. The EOA further concluded that roughly 40 percent of the commercial land deficiency, or approximately 100 acres, are needed for retail services, as detailed by the “Land Sufficiency” section in the EOA (pages 27-28).

As a residentially-designated property, the site’s economic development potential is currently limited as compared to regional shopping facilities, community and neighborhood shopping and service facilities, and other uses envisioned by the “Commercial” SACP designation and supported by the accessibility and visibility of the site. The proposed change of designation to “Commercial” will increase the number of permitted uses at the site and better takes into account the location of the subject property, thereby open up additional opportunities for economic development, consistent with the intent of the goal. The proposal meets the requirements of Goal 9.

Statewide Planning Goal 10 – Housing: *To provide for the housing needs of citizens of the state.*

Staff Response: Oregon Statewide Planning Goal 10 requires the City to allocate adequate amounts and types of land to accommodate the needed housing units for all incomes. The City has accepted, but not adopted, a Housing Needs Analysis (HNA) prepared in 2015 which includes a Buildable Land Inventory identifying a surplus of approximately 1,975 acres for single family residential development and a deficit of land available for multifamily residential development. According to the Housing Needs Analysis (HNA), “Salem has a deficit of capacity in the MF designation, with a deficit of 2,897 dwelling units and a deficit of 207 gross acres of residential land.” As of December 2020, the City has added 40 net acres of Multiple Family designated land, reducing the projected deficit to 167 acres. Additionally, the City has added 89 acres of Mixed-Use designated land which allows multi-family development as an outright permitted use, thereby further increasing the land available for multi-family development.

On February 8, 2016, the City adopted Resolution 2016-05, which includes a work plan to address the known deficit of Multi Family Residential lands. The City is expected to fully address the multi-family land deficit in 2022 with the adoption of proposed map changes in the *Our Salem* project.

The proposal will remove approximately 24.66 acres from the existing inventory of land that is designated for single family housing. The City underwent a Housing Needs Analysis (HNA) to project the City’s housing needs over the course of 20 years from 2015 to 2035. The report, conducted by ECONorthwest, found that the City of Salem has a surplus of approximately 1,975 acres of land designated for single-family detached housing. Of the total residential and mixed-use comprehensive plan designations, eighty three percent of this area is land within the Developing Residential and Single Family Residential designations. Through these recent HNA and EOA studies, adequate recent analysis has been conducted to confirm that the applicant’s proposal to convert 24.66 acres of residential agriculture land to retail commercial will improve the balance of residential and commercial land within the City. The existing

surplus of land designated for single family detached housing, as identified in the Housing Needs Analysis and cited in the applicant's written statement, includes more than enough remaining acreage to accommodate demand for single family residential development after deducting the roughly 24.66 acres that would be removed from the Developing Residential designation under the applicant's proposal. The HNA also indicates a shortage of available land for multifamily housing for the 2015 to 2035 time period. Multiple family housing is not permitted in the existing RA zone, and is listed as a conditional (rather than permitted) use in the CR (Retail Commercial) zone requested by the applicant.

Based on the current available supply of land for residential development shown in the Housing Needs Analysis, the proposal would not have an impact on the ability of the City to provide for its projected housing needs, even if no new housing units were added in future development of the site. Therefore, the proposal to change the designation of the subject property to Commercial would not have an impact on the ability of the City to provide for its projected housing needs. The proposal meets the requirements of Goal 10.

Statewide Planning Goal 11 – Public Facilities and Services: *To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

Applicant Statement: The City utilizes an Urban Growth Management Program to ensure necessary public facilities and services are available to serve new development. As part of the program, the City has designated an USA boundary delineating the area in the City where all necessary public facilities have either been installed or are fully committed in the adopted Capital Improvement Plan. The Subject Property is located outside the boundary of the USA. However, public services are readily available, as fully described in above. Therefore, all public facilities and services are readily available to serve the Subject Property.

Staff Response: The subject property is capable of being served through extension of public facilities as specified in existing infrastructure master plans. Future development will require an Urban Growth Preliminary Declaration to address linking and boundary facilities required to serve subject property under the standards and requirements of SRC Chapter 200. The applicant submitted a transportation study that is required to address the Transportation Planning Rule (OAR 660-012-0060). The applicant's transportation study identifies seven separate transportation improvements to mitigate the estimated 12,000 new daily trips to the transportation system. One of the mitigation improvements, which is not supported by the Oregon Department of Transportation, cannot be completed without support of Oregon Department of Transportation, who has jurisdiction over the southbound on ramp to I-5.

Statewide Planning Goal 12 – Transportation: *To provide and encourage a safe, convenient and economic transportation system.*

Goal 12 is implemented by the Transportation Planning Rule (TPR). In summary, the TPR requires local governments to adopt Transportation System Plans (TSPs) and requires local governments to consider transportation impacts resulting from land use decisions and development. The key provision of the TPR related to local land use decisions is Oregon Administrative Rule (OAR) 660-012-0060. This provision is triggered by amendments to comprehensive plans and land use regulations that "significantly affect" a surrounding

transportation facility (road, intersection, etc.). Where there is a “significant effect” on a facility, the local government must ensure that any new allowed land uses are consistent with the capacity of the facility. In the context of a site-specific comprehensive plan change request, such as this proposal, a “significant effect” is defined under Oregon Administrative Rule (OAR) 660-012-0060(1) as either an amendment that “allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility,” or an amendment that would “reduce the performance standards of an existing or planned facility below the minimum acceptable level identified in the TSP.”

The applicant submitted a transportation study that is required to address the Transportation Planning Rule (OAR 660-012-0060). The analysis demonstrates that the proposed changes to the Comprehensive Plan Map designation and zoning will have a significant impact on the transportation system as defined by OAR 660-012-0060 and, as such, must mitigate the impacts of the amendment to avoid further degradation to the performance of the facility as specified in the conditions of approval. The analysis must also meet the requirements of City of Salem, Administrative Rules Chapter 109, Division 6, Street PWDS.

Pursuant to PWDS Section 6.33(f)(3), “Traffic counts that are older than two years; taken during holiday weeks; or taken during construction shall not be used.” The traffic counts used in the study are all greater than two years old and, therefore, shall not be used. Additionally, the immediate area near the proposed development site is currently under construction with the development of the PacTrust (Costco) site. Updated traffic counts may not be collected at this time due to construction currently taking place in the area. There are full road closures and new turn lanes that are under construction and not fully operational; traffic volumes and turning movements would not be representative of actual traffic volumes. New traffic counts may be taken after the roads that are currently closed are opened and fully operational.

SRC 803.015(c), PWDS 6.33(i), and OAR 660-012-0060 all require mitigation to restore the operations to a level of service not exceeding pre-development conditions for each applicable horizon year from the proposed development. The analysis does not adequately mitigate the traffic impacts expected by the development pursuant to SRC 803.015(c) and PWDS 6.33(i).

The applicant’s transportation study identifies seven separate transportation improvements to mitigate the estimated 12,000 new daily trips to the transportation system. One of the seven improvements is a proposal to construct triple right-turn lanes at the southbound Interstate 5 ramp terminal at Kuebler Boulevard SE. This intersection is under the jurisdiction of Oregon Department of Transportation. In a letter dated June 1, 2021, the ODOT Region 2 Traffic Section indicated the mitigation proposed was “the most reasonable mitigation at the intersection.” Notwithstanding that statement, the Traffic Section went on to say it, “does not currently support this mitigation and does not recommend the installation of a third southbound right-turn lane at the Kuebler Boulevard at 1-5 SB Ramps intersection.” This proposal is in direct conflict with OAR 660-012-0060(3)(c-d) and, therefore, this proposed mitigation is not effective.

Another of the seven improvements proposed to mitigate the traffic impacts from the proposed CPC/ZC for this site is a \$1.75 million proportional payment for improvements that are required to mitigate the traffic impacts directly caused by this Comprehensive Plan

Change and Zone Change. The full mitigation identified in the study is estimated to cost \$5.25 million, leaving \$3.5 million unfunded to complete the full improvements. If the full mitigation is not addressed, the City will be required to accept a much higher level of congestion until the additional improvements are completed.

Until additional funding is available to complete the improvements, the following intersections will fail to meet mobility standards of both the Oregon Department of Transportation and the City of Salem and, therefore, fails to meet the criteria of the Transportation Planning Rule (ORS 660-012-0060). The following intersections will operate well over capacity and could cause significant congestion in the area:

- a. Kuebler Boulevard SE @ Battle Creek Road SE (v/c 1.19)
- b. Kuebler Boulevard SE @ 27th Avenue SE (v/c 1.58)
- c. Kuebler Boulevard SE @ Southbound Interstate 5 ramp (v/c 0.93)
- d. Kuebler Boulevard SE @ 36th Avenue SE (v/c 1.23)

The City of Salem mobility standard is (v/c 0.90) and the Oregon Department of Transportation mobility standard is (v/c 0.85).

Without full payment for or construction of the proposed mitigation, Staff cannot support the proposed comprehensive plan amendment and zone change.

The analysis submitted by the applicant is deemed not acceptable because it does not meet the requirements identified in the PWDS and it does not adequately address the mitigation needed to avoid further degradation of the transportation facilities in the vicinity of the proposed zone change. Therefore, Staff recommends denial of the proposed changes to the existing Comprehensive Plan Map designation and zoning.

Since the applicant has not adequately addressed the traffic impacts from the proposal, Staff is recommending denial of the application.

Statewide Planning Goal 14 – Urbanization: *To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.*

Staff Response: The subject property was annexed into the City of Salem in 2011 and is located within the Urban Growth Boundary (UGB). The proposal does not include extension of services to properties outside of the UGB. The proposed Comprehensive Plan and Zone Change is consistent with an orderly and efficient transition from rural to urban use for incorporated land adjacent to major transportation facilities. The proposal complies with Goal 14.

SRC 64.025(e)(2)(E): **The amendment is in the public interest and would be of general benefit.**

Staff Response: The proposed Comprehensive Plan Map amendment from Developing Residential to Commercial is in the public interest and would be of general benefit because it

would facilitate the provision of goods and services to a developing part of the City with relatively few commercial areas. An analysis of city-wide demand for buildable commercial land over the next 20 years was completed in the October 2014 EOA and determined that an additional 271 acres of commercial land is needed to meet demand the commercial land needs of the City over this period. Of this deficiency, roughly 100 acres are needed to accommodate retail commercial services. The conversion of the site to a Commercial plan designation and a Retail Commercial zoning designation will reduce this current deficit of commercial retail land.

The City has recently completed a Housing Needs Analysis (HNA) that evaluated the City's housing needs over the course of 20 years from 2015 to 2035. The report, conducted by ECONorthwest, found that the City has a surplus of approximately 1,975 acres for single family residential development and a deficit of land available for multifamily residential development. According to the Housing Needs Analysis (HNA), "Salem has a deficit of capacity in the MF designation, with a deficit of 2,897 dwelling units and a deficit of 207 gross acres of residential land." As of December 2020, the City has added 40 net acres of Multiple Family designated land, reducing the projected deficit to 167 acres. Additionally, the City has added 89 acres of Mixed-Use designated land which allows multi-family development as an outright permitted use, thereby further increasing the land available for multi-family development.

The applicant's proposal to convert 24.66 acres of residential agriculture land to retail commercial will reduce this residential land surplus and improve the balance of residential and commercial land within the City. The Plan Map amendment would help address a deficit of approximately 100 acres of retail commercial services identified in the Economic Opportunities Analysis.

The proposed change in land use designation is consistent with the location and character of the property, with Comprehensive Plan policies for siting commercial facilities, and with the transportation facilities available to serve the property.

However, as discussed in the findings for Goal 12, the transportation impacts cannot be adequately mitigated by the applicant. Approving a Comprehensive Plan map change that does adequately address its transportation system impacts is not in the in the public interest and would not benefit the public generally.

Therefore, the proposal does not satisfy this criterion.

2. FINDINGS APPLYING TO THE APPLICABLE SALEM REVISED CODE CRITERIA FOR THE ZONING MAP AMENDMENT

The following analysis addresses the proposed zone change for the subject property from RA (Residential Agriculture) to CR (Retail Commercial).

SRC Chapter 265.005 provides the criteria for approval for Quasi-Judicial Zone Changes. In order to approve a quasi-judicial Zone Map amendment request, the review authority shall make findings based on evidence provided by the applicant demonstrating that all the following criteria and factors are satisfied. The extent of the consideration given to the various

factors set forth below will depend on the degree of impact of the proposed change, and the greater the impact of a proposal on the area, the greater is the burden on the applicant to demonstrate that, in weighing all the factors, the zone change is appropriate.

The applicable criteria and factors are stated below in **bold** print. Following each criterion is a response and/or finding relative to the amendment requested.

SRC 265.005(e)(1)(A). The zone change is justified based on one or more of the following:

- (i) **A mistake in the application of a land use designation to the property**
- (ii) **A demonstration that there has been a change in the economic, demographic, or physical character of the vicinity such that the zone would be compatible with the vicinity's development pattern.**
- (iii) **A demonstration that the proposed zone change is equally or better suited for the property than the existing zone. A proposed zone is equally or better suited than an existing zone if the physical characteristics of the property are appropriate for the proposed zone and the uses allowed by the proposed zone are logical with the surrounding land uses.**

Applicant Statement: Since the annexation of the Subject Property, the properties in the surrounding area have undergone significant economic change.

Pacific Realty Associates LP (PacTrust) Property: The PacTrust property located directly to the west of the Subject Property was re-zoned from a split-zoned Commercial office/Residential Agriculture zoning to a split-zoned Commercial Office/Commercial Retail. The Commercial Office portion of that property has been developed and there is a proposed move of the Mission Street Costco to the Commercial Retail portion of the property. This change and the proposed development make the Subject Property particularly unsuitable for residential development.

Clark Property: The property directly north of the Subject Property was rezoned in March of 2016 from Residential Agriculture to Commercial Retail to allow for future commercial development of the site.

Boone Road Land SL LLC: The property directly south of the Subject Property has been rezoned to Multiple Family Residential with plans for development of an assisted living facility similar to the Bonaventure complex to the east of the Subject Property. As with the Bonaventure complex, an adjacent commercial complex would benefit the residents of the future assisted living development by providing nearby access to commercial retail.

East of Interstate 5: East of the Subject Property on Kuebler Blvd. there has been substantial development of various uses including the new State Police Headquarters, the Parks and Recreation Facility, the Bonaventure facility and corresponding expansion of commercial office and residential services to serve that community, as well as the Amazon Distribution center and other industrial operations that will impact the character of the vicinity and decreases the suitability of the Subject Property for single family residential development.

In addition, the CR zoning designation is better suited for the Subject Property than the RA zoning designation. There has been and continues to be ongoing residential development of the southeast part of the City, and the amount of nearby commercial services has not kept pace with this growth. The increase in population, employment, and the number of households in the area creates a local market for goods and services. This proposed zone change will create a commercial center to serve the population of the southeast part of the City. This will provide an opportunity for neighborhoods to have shopping and other retail services that the area currently lacks. The proposed zone change will create a commercial retail facility to serve the surrounding community and will reduce vehicle miles traveled to reach commercial services. The overall project will increase the inventory of commercial land available to retail businesses. It will provide an opportunity to expand and diversify the range of commercial and retail services available to the neighborhoods in the vicinity. The change will have a beneficial impact on the surrounding area.

Staff Response: The request satisfies (ii) and (iii); the proposed zone change is within an area of economic change which makes the proposed zone more compatible with the vicinity development pattern and is equally or better suited for the property than the existing zone. As noted in the applicant's written statement, several properties in the area have been zoned for commercial use or multi-family. The vicinity development pattern has surrounded the subject property leaving an island of residential zoned property. The City has recognized this location as being an appropriate site for commercial development through its adoption of a CR designation for an approximately 32-acre site located at the southwest corner of the 27th Avenue SE / Kuebler Boulevard intersection and an approximately 34-acre site on the northeast corner of 27th Avenue SE / Kuebler Boulevard intersection. The transportation facilities serving the site are consistent with the physical characteristics necessary to support uses allowed in the CR (Commercial Retail) zone.

It must be noted that a zone change is not an approval of a specific development proposal, but instead is approval of a permanent change in a property's zoning district. The proposed Plan Map amendment would change of the land use designation of the subject properties to "Commercial," which can be implemented by multiple zoning districts contained in the Unified Development Code. In evaluating the proposed zone change, the suitability of the specific zone (Commercial Retail) proposed by the applicant must be considered. For this reason, an additional measure of the suitability of this request is consideration of the nature of the potential future uses allowed by the CR zone when compared to the uses allowed under the existing RA zone, and the character of the existing land uses in the neighborhood. As stated previously, the subject property is located within an area largely characterized by holding uses consistent with the "Development Residential" designation.

The City is proposing to change the Comprehensive Plan map designation of the Subject Property to Commercial through the *Our Salem* planning process, however, the City's proposal is for CO (Commercial Office) zoning, due in part to transportation system impacts associated with changing the zoning to CR (Commercial Retail). The *Our Salem* proposal is expected to go through a public hearing process in spring of 2022 and is not final until adoption by City Council.

As discussed below, the applicant's transportation study that is required to address the Transportation Planning Rule (OAR 660-012-0060), has not met the burden of proof to mitigate the effects of the proposed change.

(B) If the zone change is City-initiated, and the change is for other than City-owned property, the zone change is in the public interest and would be of general benefit.

Staff Response: The proposal is not a City-initiated zone change. Therefore, this criterion does not apply.

(C) The zone change conforms with the applicable provisions of the Salem Area Comprehensive Plan.

Staff Response: Findings addressing the Comprehensive Plan Change criterion SRC 64.025(e)(2)(D), included earlier in this report, address the applicable provisions of the Salem Area Comprehensive Plan for this consolidated comprehensive plan change and zone change request. The proposal satisfies this criterion.

(D) The zone change complies with applicable Statewide Planning Goals and applicable administrative rules adopted by the Department of Land Conservation and Development.

Staff Response: Findings addressing the Comprehensive Plan Change criterion SRC 64.025(e)(2)(D), included earlier in this report, address applicable Statewide Planning Goals and Oregon Administrative Rules for this consolidated comprehensive plan change and zone change request. The proposal satisfies this criterion.

(E) If the zone change requires a comprehensive plan change from an industrial use designation to a non-industrial use designation, or from a commercial or employment designation to any other use designation, a demonstration that the proposed rezone is consistent with its most recent economic opportunities analysis and the parts of the Comprehensive Plan which address the provision of land for economic development and employment growth; or be accompanied by an amendment to the Comprehensive Plan to address the proposed rezone; or include both the demonstration and an amendment to the Comprehensive Plan.

Staff Response: The proposed zone change is from RA (Residential Agriculture) to CR (Retail Commercial). No industrial Comprehensive Plan designations or zoning districts are involved in the proposal. The existing designation is not a commercial or employment designation. Therefore, this criterion does not apply.

(F) The zone change does not significantly affect a transportation facility, or, if the zone change would significantly affect a transportation facility, the significant effects can be adequately addressed through the measures associated with, or conditions imposed on, the zone change.

Staff Response: The applicant submitted a transportation study that is required to address the Transportation Planning Rule (OAR 660-012-0060). The analysis demonstrates that the proposed changes to the Comprehensive Plan Map designation and zoning will have a significant impact on the transportation system as defined by OAR 660-012-0060 and, as such, must mitigate the impacts of the amendment to avoid further degradation to the

performance of the facility as specified in the conditions of approval. The analysis must also meet the requirements of City of Salem, Administrative Rules Chapter 109, Division 6, Street PWDS.

Pursuant to PWDS Section 6.33(f)(3), "Traffic counts that are older than two years; taken during holiday weeks; or taken during construction shall not be used." The traffic counts used in the study are all greater than two years old and, therefore, shall not be used. Additionally, the immediate area near the proposed development site is currently under construction with the development of the PacTrust (Costco) site. Updated traffic counts may not be collected at this time due to construction currently taking place in the area. There are full road closures and new turn lanes that are under construction and not fully operational; traffic volumes and turning movements would not be representative of actual traffic volumes. New traffic counts may be taken after the roads that are currently closed are opened and fully operational.

SRC 803.015(c), PWDS 6.33(i), and OAR 660-012-0060 all require mitigation to restore the operations to a level of service not exceeding pre-development conditions for each applicable horizon year from the proposed development. The analysis does not adequately mitigate the traffic impacts expected by the development pursuant to SRC 803.015(c) and PWDS 6.33(i).

The applicant's transportation study identifies seven separate transportation improvements to mitigate the estimated 12,000 new daily trips to the transportation system. One of the seven improvements is a proposal to construct triple right-turn lanes at the southbound Interstate 5 ramp terminal at Kuebler Boulevard SE. This intersection is under the jurisdiction of Oregon Department of Transportation. In a letter dated June 1, 2021, the ODOT Region 2 Traffic Section indicated the mitigation proposed was "the most reasonable mitigation at the intersection." Notwithstanding that statement, the Traffic Section went on to say it, "does not currently support this mitigation and does not recommend the installation of a third southbound right-turn lane at the Kuebler Boulevard at 1-5 SB Ramps intersection." This proposal is in direct conflict with OAR 660-012-0060(3)(c-d) and, therefore, this proposed mitigation is not effective.

Another of the seven improvements proposed to mitigate the traffic impacts from the proposed CPC/ZC for this site is a \$1.75 million proportional payment for improvements that are required to mitigate the traffic impacts directly caused by this Comprehensive Plan Change and Zone Change. The full mitigation identified in the study is estimated to cost \$5.25 million, leaving \$3.5 million unfunded to complete the full improvements. If the full mitigation is not addressed, the City will be required to accept a much higher level of congestion until the additional improvements are completed.

Until additional funding is available to complete the improvements, the following intersections will fail to meet mobility standards of both the Oregon Department of Transportation and the City of Salem and, therefore, fails to meet the criteria of the Transportation Planning Rule (ORS 660-012-0060). The following intersections will operate well over capacity and could cause significant congestion in the area:

- a. Kuebler Boulevard SE @ Battle Creek Road SE (v/c 1.19)
- b. Kuebler Boulevard SE @ 27th Avenue SE (v/c 1.58)
- c. Kuebler Boulevard SE @ Southbound Interstate 5 ramp (v/c 0.93)
- d. Kuebler Boulevard SE @ 36th Avenue SE (v/c 1.23)

The City of Salem mobility standard is (v/c 0.90) and the Oregon Department of Transportation mobility standard is (v/c 0.85).

Without full payment for or construction of the proposed mitigation, Staff cannot support the proposed comprehensive plan amendment and zone change.

The analysis submitted by the applicant is deemed not acceptable because it does not meet the requirements identified in the PWDS and it does not adequately address the mitigation needed to avoid further degradation of the transportation facilities in the vicinity of the proposed zone change. Therefore, Staff recommends denial of the proposed changes to the existing Comprehensive Plan Map designation and zoning.

Since the applicant has not adequately addressed the traffic impacts from the proposal, Staff is recommending denial of the application.

(G)The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed in the proposed zone.

Staff Response: Findings addressing the Comprehensive Plan Change criterion SRC 64.025(e)(2)(B), included earlier in this report, address the public facilities and services available to support commercial uses allowed on the subject property. The proposal satisfies this criterion.

(2) The greater the impact of the proposed zone change on the area, the greater the burden on the applicant to demonstrate that the criteria are satisfied.

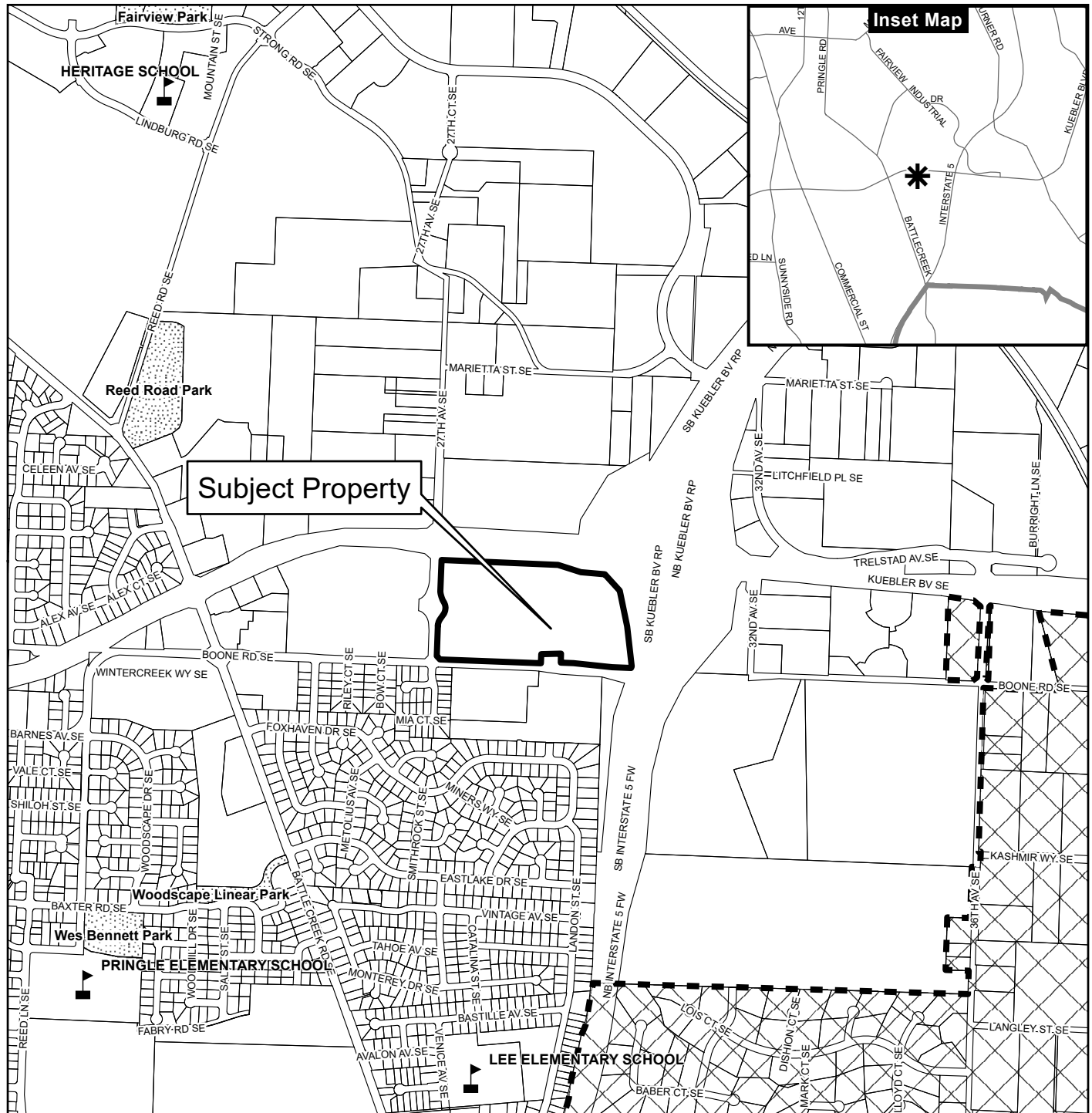
Staff Response: Staff concurs with the applicant's statement and finds that the level of information provided in applicant's statement addressing the factors listed under SRC Chapter 265.005(e) corresponds to the anticipated impact of the zone change proposal.

Attachments: A. Vicinity Map
B. Neighborhood Association Meeting Summary
C. Public Works Department Comments
D. South Gateway Neighborhood Association comments
E. Cherriots Comments and Design

Prepared by Olivia Dias, Current Planning Manager

Vicinity Map

2900 Block Kuebler BLVD SE



Legend

- Taxlots
- Urban Growth Boundary
- City Limits
- Outside Salem City Limits
- Historic District
- Schools

Parks

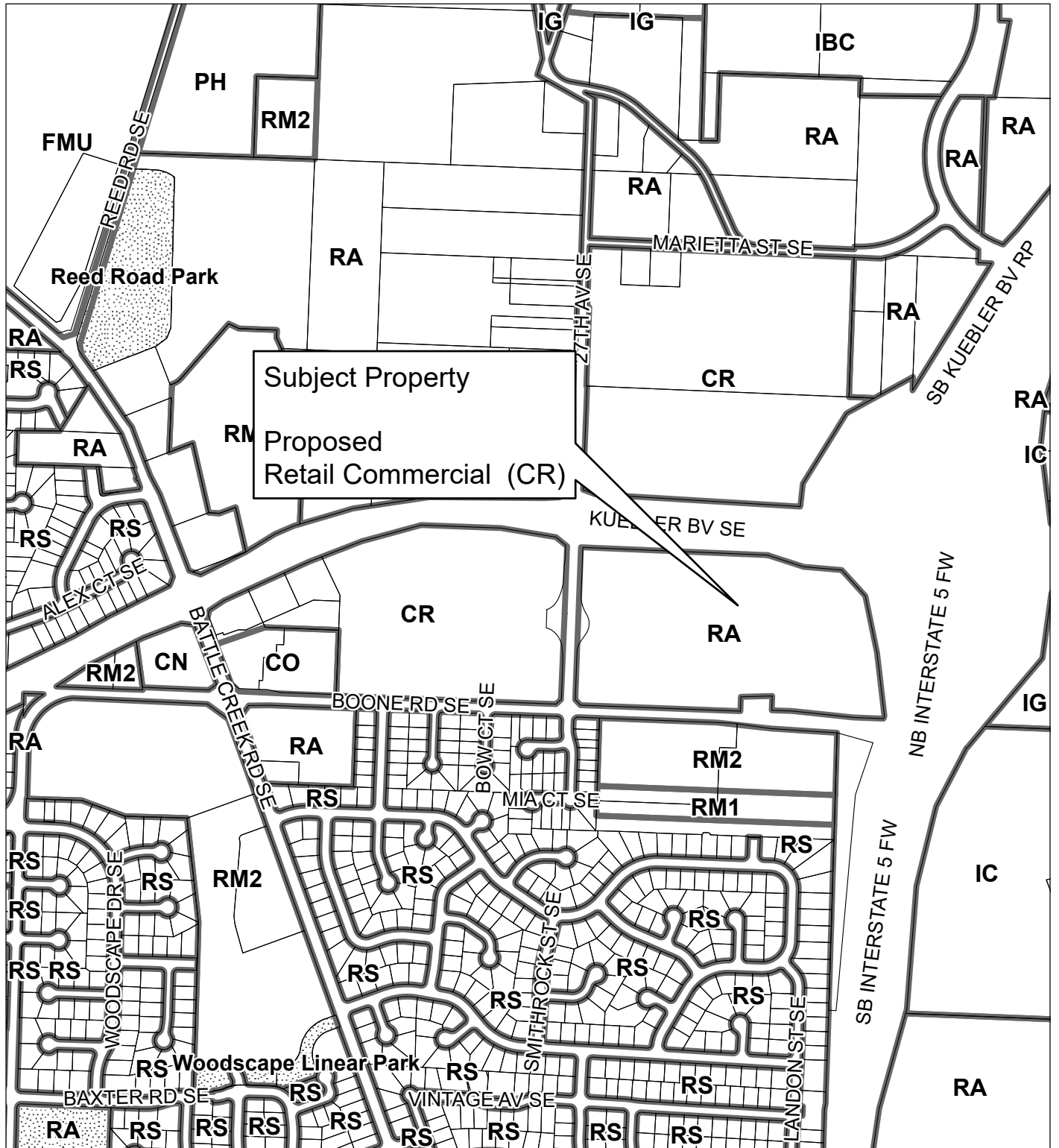
CITY OF Salem
AT YOUR SERVICE
Community Development Dept.

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PROPOSED ZONING MAP CHANGE



Legend

- | | |
|---------------------------|---------|
| Base Zoning | Taxlots |
| Urban Growth Boundary | Parks |
| Outside Salem City Limits | Schools |

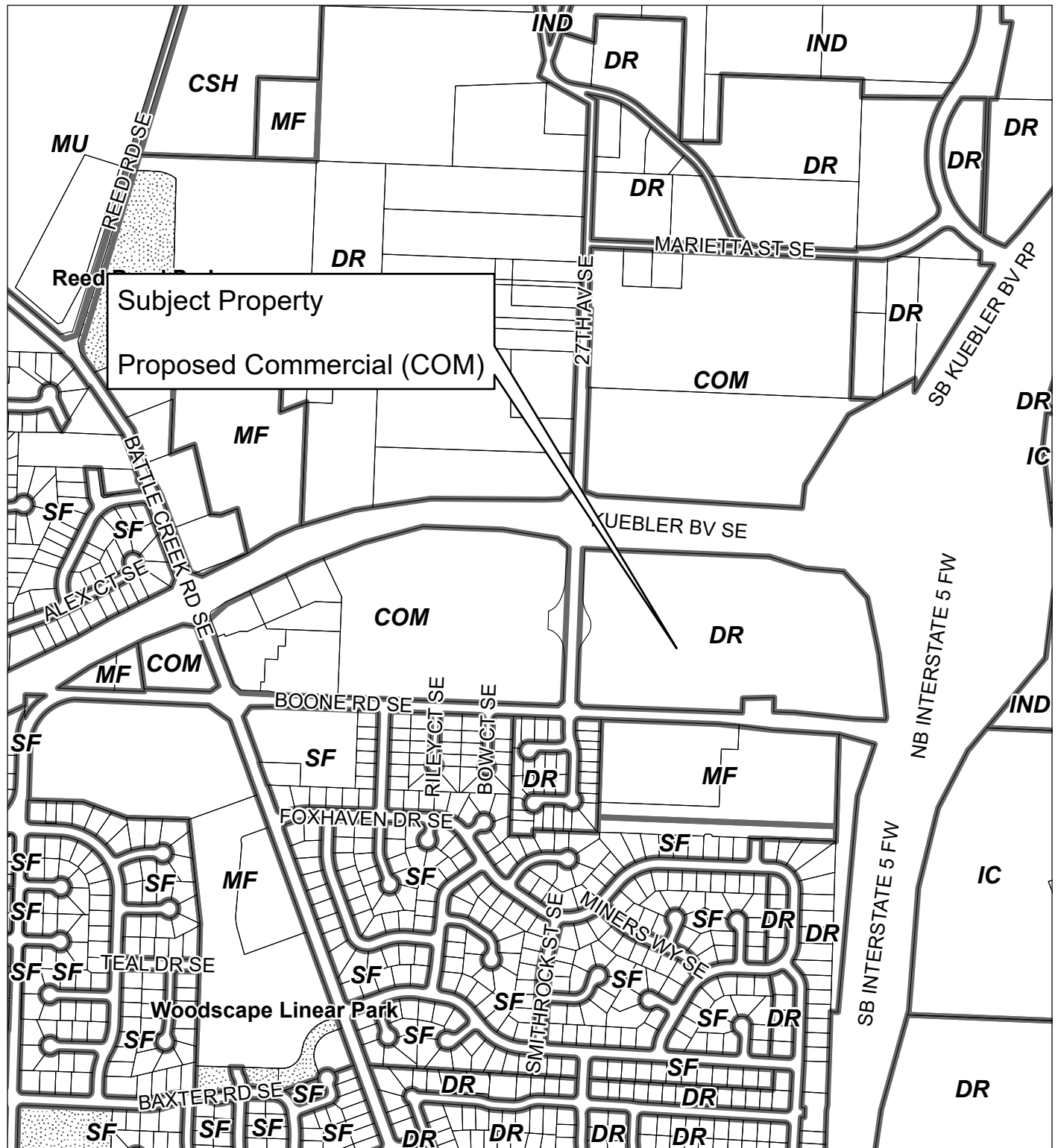
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CITY OF *Salem*
AT YOUR SERVICE
Community Development Dept.

PROPOSED COMPREHENSIVE PLAN CHANGE



Legend

- | | |
|---------------------------|---------|
| Comprehensive Plan | Taxlots |
| Urban Growth Boundary | Parks |
| Outside Salem City Limits | Schools |

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CITY OF *Salem*
AT YOUR SERVICE
Community Development Dept.

JUNE 10, 2021
SOUTH GATEWAY NEIGHBORHOOD ASSOCIATION MEETING
IN LIEU OF OPEN HOUSE SRC 300.320
ATTENDANCE LIST & NOTES

Kuebler Village

Notes by: Andy Harmon, Steele Associates Architects.

Attendees:

Julie Yip (Not actual name)– Board Member
Kathleen Lempka – Board Member
Sylvia Machado – Board Member
Michael Hughes – Vice Chair and Co-Land Use Chair
Suzi Nerli
Jerry Sachtjen - Treasurer
Dave Mckenna - Secretary
Jeremy Schoenfelder – Mosaic Management
Andy Harmon – Steele Associates Architects
Tony Martin – COS Traffic
Jakie Leung – Salem City Councilor
Charey Cooke
Deb Romano – City of Salem Code Enforcement
Austin Ross – COS Long Range Planning (present to discuss “Our Salem”)
Carol Dare
Jake Krishman – Board Member
Glenn Baly – Board Member?
Debbie Aguilar – Salem Police Department
Eunice Kim

Notes:

Jeremy Schoenfelder – Introductions, stated name, phone number and email address. Stated property location.

Andy Harmon – Brief over of the project and site and possible uses. Shared (screen-share) bubble diagram submitted for the pre-application.

JS – Traffic study and potential impacts, worst case scenario. ODOT has provide a letter acknowledging the soundness of the study and proposed mitigation efforts.

JS – Schedule, submitting by the end of June and hearing likely in late August or September.

JS – Some interest from local vendors, coffee shop etc.

Sylvia Machado – Can you share the traffic study.

JS – Yes, we will email to Glenn and he can distribute

Glenn – Yes

Q – Medical Office

JS – Described what a medical office building is

Q – How about a pharmacy

JS – Yes, we are open to that and are looking at that

Q – What about pocket parks

JS – Yes, we will look for opportunities for parks once the uses start to fill in and civil engineering is refined. We feel that parks are beneficial to the users and helps promote a true community feel, common areas as well.

Statement – We would like a dog park.

JS – That would be nice for the residential component.

Jerry – Can you reiterate the zone change.

JS – currently RA, change to CR.

Michael – Why not MU?

AH – CR aligns with Salem Vision Plan and allows the most flexibility.

Michael – I like what you are saying and then Costco site is CR and so were a little gun-shy.

JS – Understood, look at what we have done across the road, and we wish to protect our investment.

Glenn – Would you be open to certain conditions? CR could lead to a big box store or a gas station.

JS – I do not think we can do that legally through the development approval process. This is a long-term development, and we cannot prophesize that far into the future.

Glenn – PacTrust told us the same thing and look what we have.

JS – We just cannot box ourselves in right now to protect our investors.

Jerry – Sounds like you are moving forward whether we approve your project or not.

JS – Its not that were not concerned, we need to move forward because development take time. We are here to listen.

Glenn – We appreciate and like your design but with what happened with Costco and with the property to the north being zoned commercial and we are worried that we are going to get another Costco. We are concerned about traffic. If we support this, we want some type of insurance that we are not going to get another big box store with heavy traffic.

JS – Please send me your thoughts and comments.

Glenn – We will do that.

Jerry – We need to see that traffic study.

JS – yes, we will send that to you, and we had that traffic study was completed with the worst possible case scenario would be so that we understand the impacts of that and so we can stay below that. We

did the inverse of what Costco does, they provide conservative numbers to make the impact look small. We looked at it from a worst-case scenario to understand the impacts.

Q/S – Costco has fuel pumps and that will have a big impact on traffic.

JS – Yes, the fuel stations can get busy. Costco designs their stations to fill cars from either side of the car.

Jerry – Costco has 30-32 pumps going in, that will put an awful strain on 27th.

No additional comments

JS – Closing comments: We will send out the traffic study and will stay in touch, please email with any questions. Thank you!

**SIGN POSTING AFFIDAVIT
FOR NHA MEETING IN LIEU OF OPEN HOUSE**

NAME OF APPLICANT/REPRESENTATIVE Boone Road Commercial LLC

ADDRESS OF SUBJECT PROPERTY 0 Kuebler Blvd SE

CASE NO. Permit Nos. 21 115803 00 ZO & 21 115805 00 ZO

CASE PLANNER TBD

Post No Sooner Than (14 days prior to hearing) N/A

Post No Later Than (10 days prior to hearing) N/A

Return This Form to Room 305 By: (within 5 days after posting) N/A

Notice shall be posted on each street frontage of the subject property, in a conspicuous place that is visible from the public right-of-way. If no street abuts the subject property, the notice shall be placed as near as possible to the subject property in a conspicuous place that can be readily seen by the public. The notice shall remain in place throughout the day of the public hearing. The applicant shall file an affidavit of posting with the City no later than five days after the date of original posting. The affidavit shall be made a part of the file. The applicant shall remove the signs from the subject property and return them to the Planning Administrator within seven days after the close of the public hearing.

**IF THE SUBJECT PROPERTY IS NOT PROPERLY POSTED 10 DAYS PRIOR TO THE HEARING,
THE HEARING WILL NOT BE HELD.**

AFFIDAVIT OF POSTING NOTICE

I, Kelly Harder, being first duly sworn; say that I am over 21 years of age and that I posted the notice(s) as follows: (Describe location of notice(s)).

SE corner of Kuebler & 27th; NE corner of 27th & Boone;
SE corner of 27th & Boone

That I posted said notice in the manner at the place above stated on the 2nd day of June, 20 21, and in a conspicuous place.

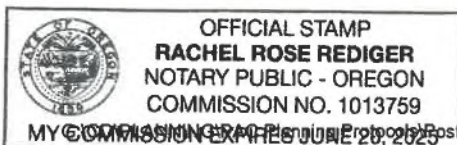
That I have personal knowledge of all facts set forth and all statements herein are just and true.

[Signature]
Applicant's Signature

-----NOTARY PUBLIC-----

STATE OF OREGON)
) ss.
County of MARION)

This instrument was acknowledged before me on this 30 day of June, 2021, by Rachel Rediger



Rachel Rediger
Notary Public for Oregon
My Commission Expires: June, 20 2025

PUBLIC NOTICE

NOTICE OF VIRTUAL NEIGHBORHOOD ASSOCIATION MEETING

SUMMARY - Proposed 24.64 acre mixed used site development,
including commercial, residential, and medical office space.

APPLICANT - Mosaic Development Services, LLC, 503-391-9999,
jeremys@mosaicdevelopment.com

ADDRESS - Tax lot 2201, encompassed by Kaebler Blvd, 27th St,
Boone Rd SE, and Interstate 5

Neighborhood Association Meeting on June 10, 2021

Meeting starts at 6:45 SE PM,
Public Virtual Zoom Meeting
Meeting ID: 841 4606 0949
Passcode : 955071

PUBLIC NOTICE

NOTICE OF VIRTUAL NEIGHBORHOOD ASSOCIATION MEETING

TAMMUNITE: Proposed 10.64 acre mixed use development,
including commercial, residential, and parking at the site.

APPLICANT: Miami Development Services, LLC, 325-191-8999,
jmi@miamicitydevelopment.com

ADDRESS: The 1/4 2007, encompassed by Eastline Blvd, 2718 St,
Browns Rd SE, and Interstate 5

**Neighborhood Association
Meeting on June 10, 2021**

Meeting starts at 6:45 SE PM,
Public Virtual Zoom Meeting
Meeting ID: 841 4606 0949
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Passcode : 955071

From: [Jeremy Schoenfelder](#)
To: [Hannah F. Stevenson](#)
Cc: [Mark D. Shipman](#)
Subject: FW: Notice of NHA Meeting in Lieu of Open House
Date: Wednesday, June 2, 2021 2:45:35 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[Kuebler Village Conceptual Site Plan.pdf](#)
[South Gateway meeting request Kuebler Village.pdf](#)

Jeremy Schoenfelder
Director of Development
Mosaic Development Services, LLC
1900 Hines St. SE, Ste. 150
Salem, OR 97302
Office 503-391-9999 x4020 | Fax 503-587-8547
Mobile 602-576-2747
www.mosaicdevelopmentservices.com



From: Jeremy Schoenfelder
Sent: Wednesday, June 2, 2021 2:45 PM
To: Glenn Baly <glennbaly12345@gmail.com>; robosushi@robosushi.com;
arasmussen@modernbuildingsystems.com; sidrakdragon@live.com; geoffreyjames@comcast.net;
LMAnderson@cityofsalem.net
Cc: odias@cityofsalem.net
Subject: Notice of NHA Meeting in Lieu of Open House

Good Afternoon,

Attached is a letter from Mosaic Development regarding plans for improvements/development on the Boone Road Commercial, LLC property, and information about an upcoming neighborhood association meeting. A representative from Mosaic Development will make a brief presentation about the project at the June 10th virtual South Gateway Neighborhood Association in lieu of holding an open house. The letter includes information about the Mosaic Development project and how to attend the virtual meeting.

Please don't hesitate to let me know if you have any questions.

Thank you,

Jeremy Schoenfelder

Director of Development

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June 2, 2021

RECIPIENTS VIA ELECTRONIC MAIL:

glennbaly12345@gmail.com, robosushi@robosushi.com, arasmussen@modernbuildingsystems.com, sidrakdragon@live.com, geoffreyjames@comcast.net and LMAnderson@cityofsalem.net

Dear Glen, Cory, Alan, Pamela, Geoffrey and Lisa:

Mosaic Development Services, LLC, (Mosaic) is in the process of developing the Boone Road Commercial property (SE corner of Kuebler & 27th) into a mixed-use project. Mosaic will be submitting a consolidated comprehensive plan change and zone change application to the City of Salem for this proposed project. The consolidated application requires Mosaic to hold an open house, or present at a neighborhood association meeting in lieu of an open house. Considering the current limitations in place to prevent the spread of the coronavirus, Mosaic is choosing to present at a virtual South Gateway Neighborhood Association meeting in lieu of holding an open house.

The City of Salem Revised Code requires this written notice be sent to you about the neighborhood association meeting opportunity.

The South Gateway Neighborhood Association will hold a virtual meeting on zoom.us on June 10, 2021 at 6:45pm. Please contact SGNA's Chair Glen Baly at glennbaly12345@gmail.com to receive a link to join the meeting.

Please see the following information about the work proposed for the subject property located at the southeast corner of 27th Avenue Southeast and Kuebler Boulevard:

The property owner (Boone Road Commercial, LLC) and the applicant (Mosaic) are proposing to rezone the Subject Property from Residential Agriculture ("**RA**") to Commercial Retail ("**CR**") and to change the comprehensive plan designation from Developing Residential to Commercial. The purpose of this combined request is to allow the Subject Property to be developed into a mixed-use project featuring a retail commercial center, mixed use, lodging, office and residential. The development of the property may be done in phases and the applicant is still developing a final development proposal which will be subject to site plan review.

Construction of phase 1 is scheduled to begin in summer of 2022. A conceptual site plan is included with this letter.

If you have any questions, please attend the Zoom meeting, or email or call me directly.



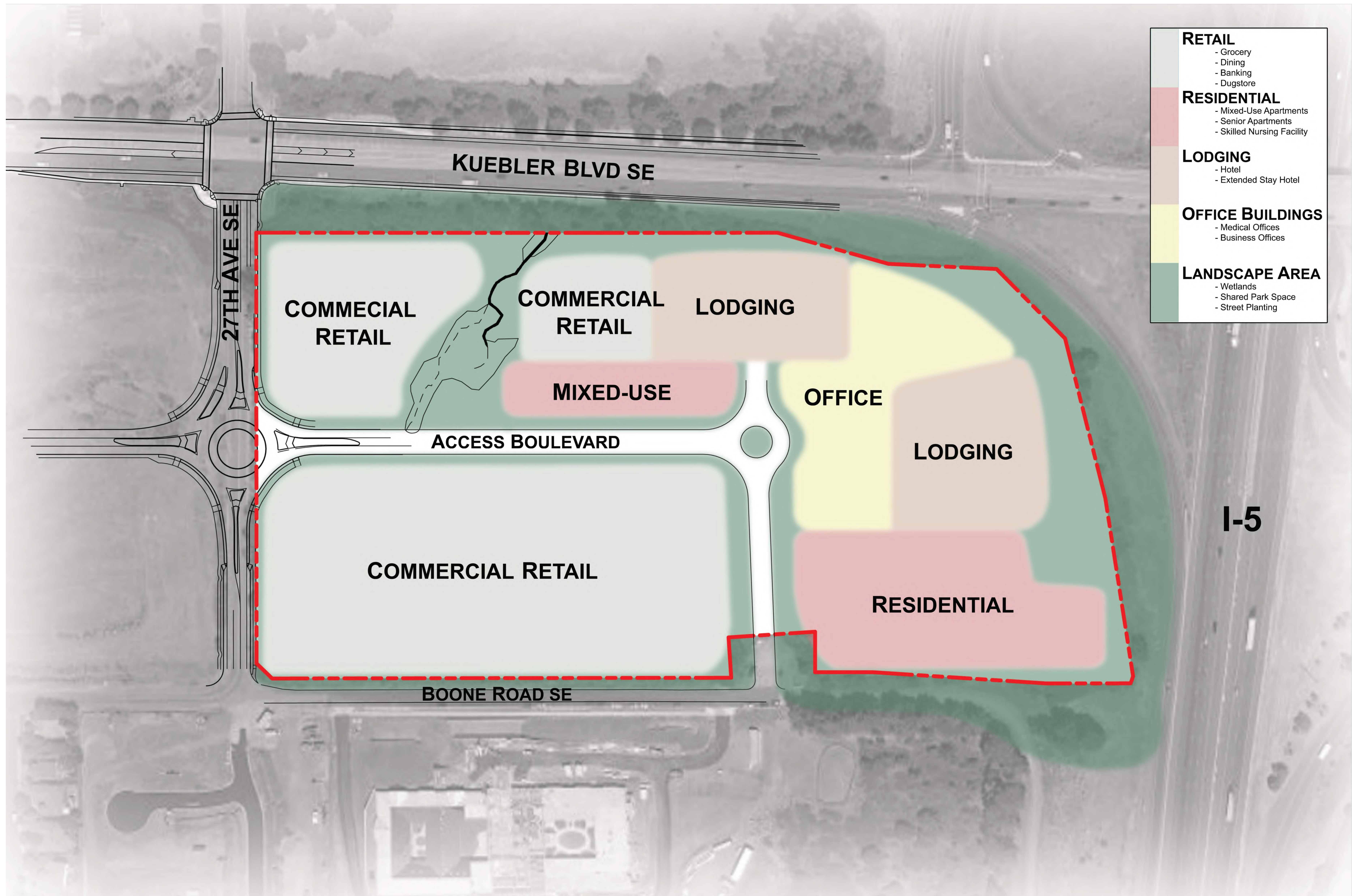
Sincerely,

A handwritten signature in dark ink, appearing to be "JS" or "J. Schoenfelder".

Jeremy Schoenfelder, Director of Development
Mosaic Development Services, LLC

Enclosures

CC: odias@cityofsalem.net




Kuebler Village Conceptual Site Plan

03.05.2021



MEMO

TO: Olivia Dias, Planning Manager
Community Development Department

FROM: Glenn J. Davis, PE, CFM, Chief Development Engineer 
Public Works Department

DATE: October 22, 2021

**SUBJECT: PUBLIC WORKS RECOMMENDATIONS
CPC-ZC21-04 (21-115803-ZO)
2900 BLOCK OF KUEBLER BOULEVARD SE
COMPREHENSIVE MAP AMENDMENT AND ZONE CHANGE**

PROPOSAL

The applicant proposes to change the Comprehensive Plan Map designation and zoning from "Single Family Residential" with RA (Residential Agriculture) zoning to "Commercial" with CR (Retail Commercial) zoning. The subject property is approximately 24.66 acres in size, zoned RA (Residential Agriculture), and located at the southwest corner of the intersection of Kuebler Boulevard and I-5 (Marion County Assessor Map and Tax Lot Number: 083W12C02201).

RECOMMENDATION

1. Public Works staff recommends denial of the proposed changes to the Comprehensive Plan Map designation and zoning.

FACTS

Public Infrastructure Plan—The *Water System Master Plan*, *Wastewater Management Master Plan*, and *Stormwater Master Plan* provide the outline for facilities adequate to serve the proposed zone.

Transportation Planning Rule—The applicant submitted a Transportation Planning Rule (TPR) Analysis in consideration of the requirements of the TPR (OAR 660-012-0060). The TPR analysis is required to demonstrate that the proposed CPC/ZC will not have a significant effect on the transportation system as defined by OAR 660-012-0060.

Streets

1. Kuebler Boulevard SE

- a. Standard—This street is designated as a Parkway street in the Salem TSP. The standard for this street classification is an 80-foot-wide improvement within a 120-foot-wide right-of-way.
- b. Existing Conditions—This street has an approximate 64- to 94-foot improvement within a 250- to 280-foot-wide right-of-way abutting the subject property.

2. Interstate 5 Freeway

- a. Standard—This street is designated as a Freeway in the Salem TSP and is under the jurisdiction of the Oregon Department of Transportation (ODOT). The standard for this street classification is a minimum 144-foot-wide right-of-way.
- b. Existing Conditions—This Freeway has a minimum 430-foot-wide right-of-way abutting the subject property.

3. Boone Road SE

- a. Standard—This street is designated as a Local street in the Salem TSP and terminates in a cul-de-sac. The standard for this street classification is a 30-foot-wide improvement within a 60-foot-wide right-of-way.
- b. Existing Conditions—The street has an approximate 30-foot improvement within a 60-foot-wide right-of-way abutting the subject property.

4. 27th Avenue SE

- a. Standard—This street is designated as a Collector street in the Salem TSP. This section of street has been previously authorized for an Alternative Street Standard pursuant to SRC 803.065(a).
- b. Existing Conditions—This street has an approximate 30- to 50-foot improvement within a variable-width right-of-way and includes a roundabout that provides access to the subject property.

Storm Drainage

1. Existing Conditions

- a. A 12-inch storm main is located in Kuebler Boulevard SE.

- b. A 12-inch storm main is located in Boone Road SE.
- c. A 30-inch storm main is located in 27th Avenue SE.

Water

1. Existing Conditions

- a. The subject property is located in the S-2 water service level.
- b. A 30-inch water main is located in Boone Road SE. Mains of this size generally convey flows of 13,00 to 30,800 gallons per minute.
- c. A 24-inch water main is located in Boone Road SE. Mains of this size generally convey flows of 8,500 to 19,700 gallons per minute.

Sanitary Sewer

1. Existing Conditions

- a. An 8-inch sewer main is located in Boone Road SE.
- b. A 24-inch sewer main is located in 27th Avenue SE.

CRITERIA AND FINDINGS

Criteria: SRC 265.005(e)(1)(F) The zone change does not significantly affect a transportation facility, or, if the zone change would significantly affect a transportation facility, the significant effects can be adequately addressed through the measures associated with, or conditions imposed on, the zone change.

Finding: The applicant submitted a transportation study that is required to address the Transportation Planning Rule (OAR 660-012-0060). The analysis demonstrates that the proposed changes to the Comprehensive Plan Map designation and zoning will have a significant impact on the transportation system as defined by OAR 660-012-0060 and, as such, must mitigate the impacts of the amendment to avoid further degradation to the performance of the facility as specified in the conditions of approval. The analysis must also meet the requirements of City of Salem, Administrative Rules Chapter 109, Division 6, Street PWDS.

Pursuant to PWDS Section 6.33(f)(3), "Traffic counts that are older than two years; taken during holiday weeks; or taken during construction shall not be used." The traffic counts used in the study are all greater than two years old and, therefore, shall not be

used. Additionally, the immediate area near the proposed development site is currently under construction with the development of the PacTrust (Costco) site. Updated traffic counts may not be collected at this time due to construction currently taking place in the area. There are full road closures and new turn lanes that are under construction and not fully operational; traffic volumes and turning movements would not be representative of actual traffic volumes. New traffic counts may be taken after Costco is operational.

SRC 803.015(c), PWDS 6.33(i), and OAR 660-012-0060 all require mitigation to restore the operations to a level of service not exceeding pre-development conditions for each applicable horizon year from the proposed development. The analysis does not adequately mitigate the traffic impacts expected by the development pursuant to SRC 803.015(c) and PWDS 6.33(i).

The applicant's transportation study identifies seven separate transportation improvements to mitigate the estimated 12,000 new daily trips to the transportation system. One of the seven improvements is a proposal to construct triple right-turn lanes at the southbound Interstate 5 ramp terminal at Kuebler Boulevard SE. This intersection is under the jurisdiction of Oregon Department of Transportation. In a letter dated June 1, 2021, the ODOT Region 2 Traffic Section indicated the mitigation proposed was "the most reasonable mitigation at the intersection". Notwithstanding that statement, the Traffic Section went on to say it, "does not currently support this mitigation and does not recommend the installation of a third southbound right-turn lane at the Kuebler Boulevard at 1-5 SB Ramps intersection." This proposal is in direct conflict with OAR 660-012-0060(3)(c-d) and, therefore, this proposed mitigation is not effective.

Another of the seven improvements proposed to mitigate the traffic impacts from the proposed CPC/ZC for this site a \$1.75 million proportional payment for improvements that are required to mitigate the traffic impacts directly caused by this Comprehensive Plan Change and Zone Change. The full mitigation identified in the study is estimated to cost \$5.25 million, leaving \$3.5 million unfunded to complete the full improvements. If the full mitigation is not addressed, the City will be required to accept a much higher level of congestion until the additional improvements are completed.

Until additional funding is available to complete the improvements, the following intersections will fail to meet mobility standards of both the Oregon Department of Transportation and the City of Salem and, therefore, fails to meet the criteria of the Transportation Planning Rule (ORS 660-012-0060). The following intersections will operate well over capacity and could cause significant congestion in the area:

- a. Kuebler Boulevard SE @ Battle Creek Road SE (v/c 1.19)
- b. Kuebler Boulevard SE @ 27th Avenue SE (v/c 1.58)
- c. Kuebler Boulevard SE @ Southbound Interstate 5 ramp (v/c 0.93)
- d. Kuebler Boulevard SE @ 36th Avenue SE (v/c 1.23)

The City of Salem mobility standard is (v/c 0.90) and the Oregon Department of Transportation mobility standard is (v/c 0.85).

Without full payment for or construction of the proposed mitigation, Public Works cannot support the proposed comprehensive plan amendment and zone change.

The analysis submitted by the applicant is deemed not acceptable because it does not meet the requirements identified in the PWDS and it does not adequately address the mitigation needed to avoid further degradation of the transportation facilities in the vicinity of the proposed zone change. Therefore, Public Works recommends denial of the proposed changes to the existing Comprehensive Plan Map designation and zoning.

Criteria: SRC 265.005(e)(1)(G) The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed zone.

Finding: The subject property is capable of being served through extension of public facilities as specified in existing infrastructure master plans. Future development will require an Urban Growth Preliminary Declaration to address linking and boundary facilities required to serve subject property under the standards and requirements of SRC Chapter 200.

Prepared by: Jennifer Scott, Program Manager
cc: File

September 17, 2021

Re: 21-115803-ZO

City Staff:

At the March meeting of the South Gateway Neighborhood Association, Jeremy Shoenfelder of Mosaic Development and Andy Harmon of Steele Associates showed a preliminary proposal for the development of land on the East side of 27th Ave .SE to the South of Kuebler Blvd. They said they were in the early stages of design and had no tenants yet but wanted to work with the community on development. We were told they wanted some upscale mixed use that might include medical offices, restaurants, walkable spaces and senior living facilities all of which would be compatible to the senior living development to the south. One of the questions they were asked was why they wanted to change the zone from RA to Retail Commercial rather than Mixed Use-I or Mixed Use-II. The answer was that, while they didn't have any prospective tenants yet, CR would allow for more possibilities.

After further investigation, and comparing permitted uses allowed in the various zoning classifications, we have been unable to find any uses that would be permitted under the CR designation but not under MU that would be desirable in this neighborhood.

The Mixed-Use zone designation did not yet exist when the adjacent properties were rezoned to CR so there were no other options at the time. This resulted in a major conflict within the neighborhood after the developer gave verbal promises which were not memorialized as conditions for approval. This is one of the reasons the Mixed-Use designation would be much more desirable in this area which is surrounded by residential and church properties.

Therefore, unless the developer can give some specific examples of a use that requires the CR designation, the South Gateway Neighborhood Association is strongly opposed to rezoning the property to CR. This is an area that already has traffic problems and will have even more with the advent of the Costco site across 27th Ave. and another proposed shopping development on the on the north side of Kuebler Blvd. In addition, the allowance of any kind of drive-through business, which would be allowed under CR but not under MU-I or MU-II, would exacerbate the traffic problems and would be an undesirable use on this property.

Thank you for your consideration of our comments.

Michael Hughes

SGNA Land-use co-chair



RESPONSE TO REQUEST FOR COMMENTS

DATE: Wednesday, October 13, 2021

CASE/APP NUMBER: CPC-ZC21-04 / 21-115803-ZO / 21-115805-ZO

PROPERTY LOCATION: 2900 Block of Kuebler Blvd SE

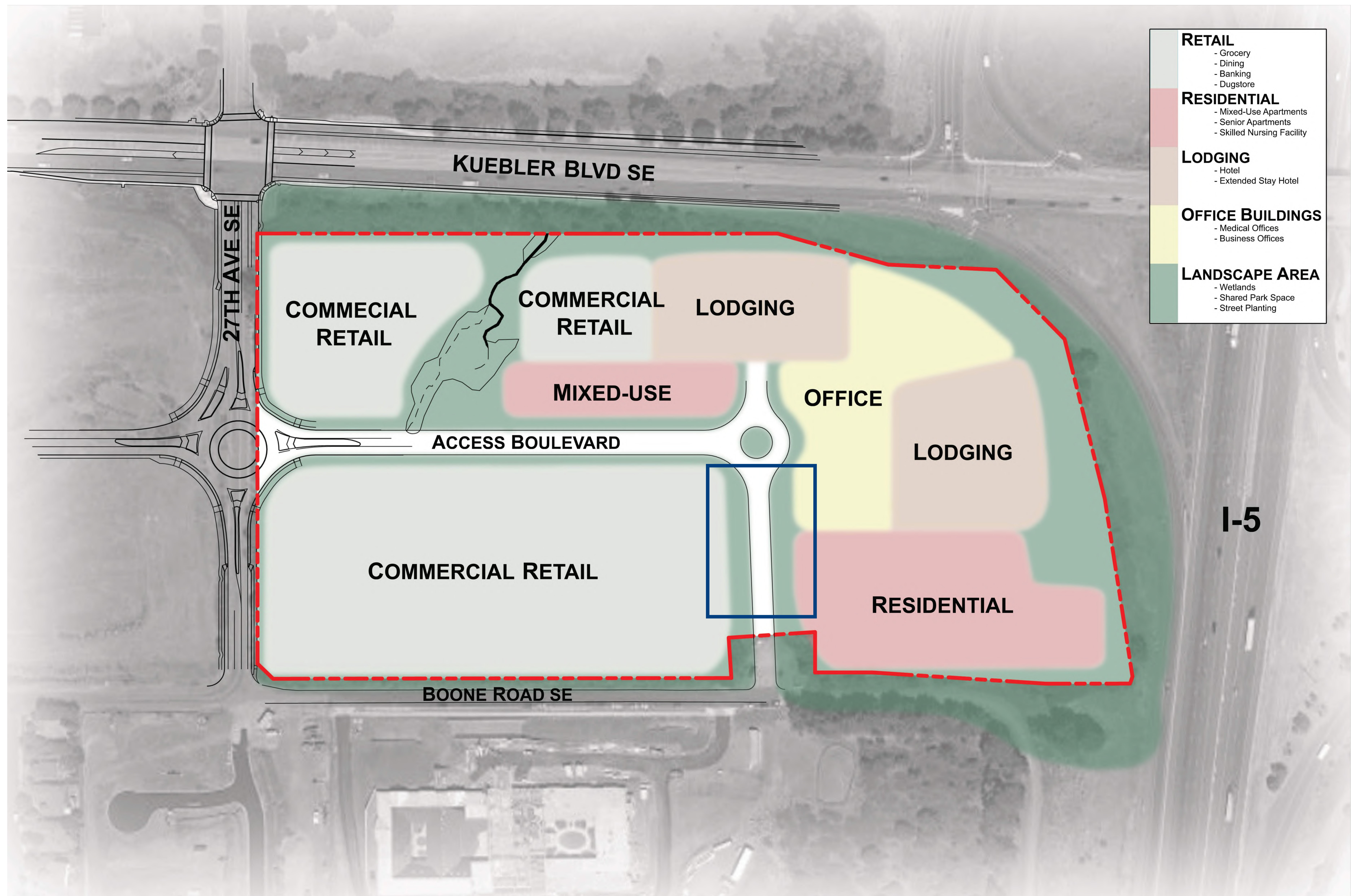
CASE MANAGER: Olivia Dias, Current Planning Manager, City of Salem

Email: odias@cityofsalem.net

COMMENTS FROM: Jolynn Franke, Transit Planner I, Cherriots

Email: planning@cherriots.org

COMMENTS: Cherriots was contacted by a developer regarding this property in June of this year. This developer was very interested in accommodating public transit and Cherriots was very interested in serving this development. The conceptual site plan included with this response was provided to Cherriots by the developer. It shows a new roadway through the development connecting at Boone Rd and 27th Ave with a roundabout at the apex. Cherriots conversations with the developer consisted of adding a bus stop pair on this new road near Boone Rd, south of the roundabout. Regardless of whether this application has been submitted by that same developer or not, Cherriots is still very interested in providing service with bus stops at this location.



Kuebler Village Conceptual Site Plan

03.05.2021

A

B

Existing Sidewalk
(Option 4 – Sidewalk Connected to the Curb)

Front Door

Back Door

Bus

Crosswalk

- A – Distance from front edge of front door pad must be no less than 6 feet from crosswalk or stop line.
- B – Front door pad must be 6 feet wide, and create at least 8 feet of depth from curb face to back the pad, and less than 2% cross slope.

Existing Sidewalk
(Option 2 – Sidewalk Separated from the Curb)

A

B

C

Front Door

Back Door

Bus

Crosswalk

A – Distance from front edge of front door pad must be no less than 6 feet from crosswalk or stop line.

B – Front door pad must be 6 feet wide, at least 8 feet deep from curb face to back of sidewalk, and less than 2% cross slope.

C – Rear door pad must extend at least 21 feet, 6 inches back from the front door pad and be 5 feet deep.

**Existing Sidewalk
(Option 1 – Sidewalk Separated from Curb)**

A

B

C

E

D

Front Door

Back Door

Bus

Crosswalk

A – Distance from front edge of front door pad must be no less than 6 feet from crosswalk or stop line.

B – Front door pad must be 6 feet wide, at least 8 feet deep from curb face to back of sidewalk, and less than 2% cross slope.

C – Distance between front and back door pads is 11 feet, 6 inches.

D – Optional rear door pad must be 10 feet wide and 5 feet deep.

E – A connecting pad at least 5 feet wide to connect the door pad to the sidewalk with less than 2% cross slope.

**Existing Sidewalk
(Preferred Design / Sidewalk Separated from the Curb)**

A

B

C

D

Front Door

Back Door

Bus

Crosswalk

- A – Distance from front edge of front door pad must be no less than 6 feet from crosswalk or stop line.
- B – Front door pad must be 6 feet wide, at least 8 feet deep from curb face to back of sidewalk, and less than 2% cross slope.
- C – Distance between front and back door pads is 11 feet, 6 inches.
- D – Rear door pad must be 10 feet wide and the same depth and slope requirements for the front door pad.

FOR MEETING OF: DECEMBER 21, 2021**CASE NO: CPC-ZC21-04****AGENDA ITEM: 5.1****TO: PLANNING COMMISSION****FROM: LISA ANDERSON-OGILVIE, AICP, DEPUTY COMMUNITY DEVELOPMENT
DIRECTOR AND PLANNING ADMINISTRATOR****DATE: DECEMBER 21, 2021****SUBJECT: SUPPLEMENTAL STAFF REPORT FOR COMPREHENSIVE PLAN CHANGE /
ZONE CHANGE NO. 21-04; 2900 BLOCK OF KUEBLER BLVD SE (AMANDA
APPLICATION NO. 21-115803-ZO; 21-115805-ZO)****BACKGROUND**

On November 2, 2021, the Planning Commission held a public hearing and received testimony for consolidated Comprehensive Plan Map Amendment and Zone Change Case No. 21-04. The staff report made available on October 26, 2021 recommended denial of the application.

On November 2, 2021, the Planning Commission continued the public hearing to November 16, 2021. At the November 16, 2021 hearing staff and the applicant requested the Planning Commission continue the public hearing until December 21, 2021 to resolve concerns with the Transportation Planning Rule Analysis (TPR). The Planning Commission granted the continuance to December 21, 2021.

SUPPLEMENTAL FINDINGS**Public Comments**

After the staff report was written and made available, comments were received from Mosaic Development Services (applicant). These comments are summarized below and followed by staff responses.

1. *Equally or Better Suited Designation.* A demonstration that the proposed designation is equally or better suited for the property than the existing designation.

The Planning Commission asked for more information regarding factors taken into consideration for what is 'equally or better' related to the above decision criterion.

Staff Response: Staff reviews many factors when considering the criterion above. Starting with the Salem Area Comprehensive Plan policies for guidance and recent documents accepted by City Council. Those documents are the Housing Needs Analysis and the Economic Opportunities Analysis. Determining what is equally or better suited includes consideration of a requested zone that would meet a deficiency that the City has identified in the Comprehensive Plan, supporting documents and studies. The staff report dated November 2, 2021 on Page 7 responds to the deficiency of commercial lands and multi-family lands

There are several Comprehensive Plan policies, which are addressed in the above referenced staff report, addressing location of commercial properties such as being located on major arterials, creating complete neighborhoods, including clustering of residential and

commercial uses. Creating complete neighborhoods is one way to reduce reducing vehicle trips that contribute to climate change, as discussed in the City's draft Climate Action Plan.

Other considerations are physical factors, such as topography or other physical features of the subject property. Staff took into consideration the site characteristic, including the property abutting the I-5 interchange which could make it incompatible with residential development.

2. Our Salem

The applicant provided findings that the City of Salem is proposing the subject property be zone CR (Retail Commercial) as part of 'Salem Futures'. The applicant contends that the Comprehensive Plan project intends to change the zoning to the same zoning as the applicant is proposing.

Staff Response: The current project to update the Salem Area Comprehensive Plan is called 'Our Salem', which was initiated on December 6, 2021 for changes. A previous update to the Salem Area Comprehensive Plan in the 1990s, 'Salem Futures' was never adopted.

The current project, 'Our Salem', updates to the Comprehensive Plan or changes to the Comprehensive Plan Map would not occur until late 2021 after public hearings and approval by the City Council. The 'Our Salem' proposed Comprehensive designation is Commercial, as shown in Attachment A. The corresponding zoning proposed by the 'Our Salem' project is CO (Commercial Office), as shown in Attachment A.

The largest difference between the applicant's proposal of CR (Retail Commercial) and the Our Salem proposed CO (Commercial Office), is the amount of retail sales allowed. The applicant's proposed zone allows all types of retail sales, where the Commercial Office zone only allows newsstands, caterers and retail sales of agricultural products with a 1,000 square footage building limit. The zone proposed by 'Our Salem' generally allows office and professional services, along with a mix of housing and limited retail and personal services, where the applicant's proposal allows a wide array of retail sales and office uses.

3. Other Potential Zoning Designation

When meeting with the applicant to discuss the issues with the Transportation Planning Rule Analysis, staff suggested proposing a different zone that would have less of an impact. Discussions ranged between Commercial Office (CO), Mixed Use zones and multiple family residential zones. Even designating portions of the property to a zone with a lower traffic impact was suggested. The suggestion was an attempt to limit the amount of business that were automobile ordinated, which in turn would reduce or alter the peak traffic period. Retail sales peak during the weekends; Commercial Office uses peak during the week.

The applicant declined to revise their proposal based on their analysis of proposed Commercial Office zoning, which they stated would generate similar level of trips as the CR zone. The applicant's analysis of worst-case scenario under CO zoning used several multi-

level (up to eight stories) office buildings and while this is a worst-case scenario under the CO zone, it may not be realistic in Salem's market. Additionally, office uses do not have the same peak level of traffic as retail, which is one of the reasons staff proposed CO zoning in 'Our Salem.' Staff does not agree that the CO Zone would provide the same amount of automobile generation as CR, that the peak of the businesses would be similar to the CR zone or that the market would support 24-acres of eight story office buildings.

4. Salem Area Transportation System (TSP) Plan – Policies

Staff Response: The transportation system in the area of the proposed Comprehensive Plan change is designed to support the current comprehensive plan designation of RA. The system is not designed to support traffic demand that would be generated by the Commercial/Retail zoning district. For this reason, the proposed Comprehensive Plan/Zone Change is not consistent with the Salem Transportation System Plan, Comprehensive Transportation Policy 6. Any change needs to be found consistent with the Policies of the Salem Area Comprehensive Plan.

Access is proposed to load onto 27th Street SE, which is designated as a collector street in the Salem TSP. The design range for a collector street is for daily traffic volumes between 1,600 and 10,000 vehicle trips (Street System Element, Table 3-1). This site alone is projected to generate 20,000 vehicle trips. This level of traffic is not consistent with the collector street designation.

The mitigation proposed creates additional barriers for pedestrian travel at the intersection of 27th and Kuebler by introducing double turn lanes, resulting in a collector street cross section that requires pedestrians to cross seven lanes of travel. This design is contrary to the Salem Transportation System Plan, Street System Element, Policy 2.2, Multimodal Intersection Design, that promotes safe and accessible crossings for pedestrians. In addition, the design introduces additional conflict points for bicycles navigating 27th Street between Boone Road SE and Kuebler Boulevard SE. For these reasons, the proposed design is inconsistent with Policy 2.2.

Traffic impacts created by new development must be mitigated per Salem Transportation System Plan, Street System Element, Policy 2.5, Capacity Efficient Design and Level of Service (LOS) Standards. The requirements for a traffic impact or Transportation Planning Rule (TPR) analysis are adopted in Street System Element, Policy 5.1, Traffic Impact Analysis Requirements, which references the criteria established in the City of Salem Street Design Standards. The findings represented in the TPR analysis result in levels of congestion and delay that do not meet the established thresholds.

Constructing a collector street with seven lanes at the intersection with Kuebler is not consistent with the street design standard for a collector street, which calls for one travel lane in each direction (Salem Transportation System Plan, Street System Element, Figure 3-2). Creating a seven-lane cross section is not sensitive to the livability of the surrounding neighborhood that uses this roadway to access the network of arterial streets and is therefore inconsistent with Salem Transportation System Plan, Street System Element, Policy 2.8.

5. Transportation Rule Analysis

a. Traffic Counts timing

- The applicant provided findings that the Public Works Design Standard (PWDS) is not applicable to the Comprehensive Plan Change and Zone Change application, since the PWDS are not codified as part of the Salem Revised Code, the standards cannot directly apply.

Staff Response: City Council adopted the Salem Transportation System Plan (TSP). Policy 5.1 of the TSP Street System Element establishes the requirements for an analysis and references the street design standard. Traffic counts are a key element of any traffic study, providing information about existing traffic operations. City Design Standards call for traffic counts to be two years old or newer, so they represent current traffic situations. The counts utilized in the Applicant's analysis are older than two years. Additionally, commercial retail traffic peaks occur on the weekends, which was not studied in the traffic study. Based on the poor intersection operations during the weekdays for Costco and the proposed shopping center development, it is very likely the intersections will fail during the weekends and during holiday times.

The applicant contests that the City Council superseded the PWDS by approving the Site Plan Review for Costco with associated Traffic Impact Analysis.

Staff Response: City Council can make individual decisions as they deem appropriate; the proposed application is a separate site and is required to follow Public Works Design Standards, Salem Revised Code and all other applicable laws and regulations. The Traffic Impact Analysis that was submitted for the Costco site in 2018 was not required as part of Site Plan Review but was provided by the applicant to evaluate their previously required mitigation. A Site Plan Review application is not what is currently before the Planning Commission.

- The applicant's finding state that the construction of Costco is not a 'Disruptive Event' and that the city is delaying development for an indefinite time period. Therefore, applying an unlawful moratorium.

Staff Response: The opening of Costco is not a 'Disruptive Event', but when Costco begins operation in March 2022, there will be significant traffic changes in the area. The proposed application indicates that the site will share a main access with Costco through a round-about on 27th Street. The applicant has not provided adequate evidence that Costco and the proposed development under a commercial retail zone will not overload the round-about with traffic during peaks times and cause it and the adjacent intersections to fail. The request to change the Comprehensive Plan to 'Commercial' does not meet the criterion.

- The applicant's findings state that the traffic counts provided were derived from May-June 2019 and therefore taken during the two-year window outlined in the PWDS.

Staff Response: The two-year window for a traffic count was determined to be measured from the date the application was deemed complete to the date of the counts. This two-year window is not met. However, the biggest issue with the counts is that they do not include Costco traffic. The applicant's traffic study uses estimated Costco traffic to build its case for approval. Costco is not a typical commercial retail use, generating high traffic volumes. Staff is not convinced the *estimated* traffic is sufficient given that the applicant's traffic study shows very long vehicle queues and delays. A variation in as little as one percent from the actual traffic to estimated traffic will result in failure of the streets and intersections.

b. Goal 12 – Transportation Planning and Mitigation

The applicant's findings state that the application of PWDS isn't relevant to the approval criteria and that the applicant is not required to *fully mitigate* the intersections, as stated in the Staff Report. The applicant contests that the proposed improvements by the applicant will meet OAR 660-012-0060(2)(d) and leave the transportation system in a better state than it is today.

Staff Response: OAR 660-012-0060(2)(d) states, "Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation of the performance of the facility by the time of the development through one or a combination of transportation improvements or measures." Staff is only requiring the applicant mitigate their projected traffic impacts, as required under the OARs. The zone change and the proposed mitigation will not, contrary to the applicant's statement, make the transportation system better. Current zoning would allow a development that generates 2,280 trips. The requested zoning could generate almost 10 times the amount of traffic; 20,240 trips. The City's Design Standards state that delay at an intersection signal should be less than 80 seconds; the applicant's materials show many of the vehicle movements will be greater than 80 seconds which does not support acceptable intersection operations, sometimes as long as 5 minutes to get through the light.

There are many factors why Staff does not support the zone change including site limitations forcing most site traffic to one access on 27th Street; the large amount of traffic generated by the proposed zone change; timing of the peak traffic volumes occurring with the adjacent Costco whose traffic is also focused on 27th Street, the long delays at the intersection signal, long vehicle queues, concerns that weekend traffic will create greater impacts, and the issue that the intersections in the area are already failing.

c. Constitutional Takings

The applicant provides findings that the City, by refusing to allow the applicant to develop, is extracting improvements through conditions of approval that are unconstitutional.

Staff Response: In order for an exaction to meet the constitutional requirements there must be an "essential nexus" for the stated purpose of the exaction (*Nollan v. California*

Coastal Com., 483 US 825, 836-838, 107 S Ct 3141, 97 L Ed2d 677 (1987)) and there must be “an individual determination that the required dedication is related both in nature and extent to the impact of the proposed development.”(Dolan v. City of Tigard, 512 US 374, 391, 114 S Ct 2309, 129 L Ed2d 304 (1994)).

The zone change, as currently proposed, will generate 12,000 new trips for a traffic system already over-burdened by development in the area. Staff has identified four intersections that will be adversely impacted if the Developer is allowed to move forward with the proposed zone change:

- a. Kuebler Boulevard SE @ Battle Creek Road SE
- b. Kuebler Boulevard SE @ 27th Avenue SE
- c. Kuebler Boulevard SE @ Southbound Interstate 5 ramp
- d. Kuebler Boulevard SE @ 36th Avenue SE

The proposed changes as identified by the applicant’s December 10, 2021, letter to Ms. Dias are specifically tailored to the impacts the proposed zone change will have on the affected intersections. Although the proposed changes do not adequately resolve the issue of wait times at the intersections, they do provide additional capacity and refined management of traffic in an effort to mitigate those direct impacts. Therefore, the modifications meet both nexus and proportionality requirements of *Nollan* and *Dolan*.

Applicant has not met its burden under SRC 265.005(e)(1)(F) in that they have not established that the significant effects can be adequately addressed through the measures associated with, or conditions imposed on zone change. Applicant has provided counts that are too old as provided by Public Works Design Standards 6.33(f)(3) in that they are older than two years when measured from the date of completion of the application. On that basis alone the Commission could deny the Application. However, even if the traffic counts provided by the applicant are applied, they are insufficient to carry the burden of proof to show that the mitigation offered by the Applicant is adequate. The evidence is not persuasive because of the changed circumstances associated with the passage of time, the pandemic, and the opening of the Costco in the near vicinity of the subject property have made prediction of the actual traffic impacts too uncertain. The narrow tolerances associated with the traffic facilities in the area mean that if the estimates are off by even a small percent, the mitigation proposed will not be adequate to handle the additional traffic and the facilities will fail, both to the detriment of the Applicant and the surrounding property owners. Couple the uncertainty surrounding the state of traffic in the vicinity with the long wait times at lights that can be anticipated; the result is an area traffic system that will be prone to congestion and failure.

6. Applicant Additional Written Testimony

On December 10, 2021, the applicant submitted two documents with additional testimony. The applicant submitted a letter from DKS Associates and Kellington Law Group, PC.

In response to the applicant’s submittal, Staff reviewed the Transportation Planning Rule Analysis and expressed some concerns. Staff and DKS met to discuss the concerns regarding the Transportation Planning Rule Analysis. DKS submitted a response to issues

raised to those concerns; staff disagrees with DKS on the following. The bulleted items were concerns raised to the applicant prior to meeting to discuss, the *italicized* is the applicant's response submitted into the record.

- Staff raised concerns that the proposed mitigation is for double left turn lanes and double right turn lanes for northbound 27th at Kuebler. It is unclear how the lanes would function, specifically how cars would safely maneuver out of the round-about and the site driveway.
- *DKS provided an attachment to their letter with a conceptual design layout and cost estimation showing the segment of 27th Street between Kuebler Blvd and the site access round-about for the proposed mitigation.*

Staff Response: Upon review, there are concerns with lane widths for the right turn lanes which seem to be narrower than standard. Based on the applicant's analysis, the 300-foot queuing of left turning vehicles will place the last vehicle in the pedestrian crosswalk marking, meaning that any vehicles trying to get to the through or right-turn lanes will be within the round-about. This may block other traffic using the round-about, causing it to fail during peak times.

- Staff raised concerns regarding the queuing analysis and the lack of available storage for the developments queuing lengths. This will back traffic into the round-about and could cause the round-about to fail. Failure of the roundabout will stop traffic in both directions traveling on 27th Street.
- *DKS responded that the TPR analysis shows that the proposal will not result in an increase in queue lengths compared to current zoning and that specific design details, such as storage lengths, should be based on queueing analysis conducted for a specific development plan in a Traffic Impact Analysis (TIA), not a TPR analysis based on hypothetical worst-case development.*

Staff Response: The queue lengths are close to backing into the round-about; staff believes that it will likely happen during holidays and on busier shopping times of the year. This traffic will likely cause failure at the intersections and round-about. Failure means traffic will back into the round-about blocking vehicles from being able to move within the round-about, which is unacceptable.

- The analysis focuses on weekday queuing needs but commercial developments have higher weekend traffic generation. The application lacks analysis of the effect on queuing and signal operations on 27th Street.

DKS responded that the TPR criteria for a comprehensive plan change is strictly based on the planning horizon and analysis period in the City's Transportation System Plan (TSP), which is the weekday PM peak hour. The City Public Works Standards are consistent with the TPR and require "Traffic counts shall be collected on a Tuesday, Wednesday, or Thursday that is not a City, State, or Federal holiday, when K-12 school is in session." The applicant states that the TPR study adequately addresses these criteria by analyzing and mitigating for the weekday PM peak hour traffic operations.

Weekend traffic analysis would have no influence on TPR findings. Furthermore, any weekend traffic analysis conducted at this point would need to rely on outdated historical traffic counts from 2017, which would introduce additional uncertainty into the analysis. The applicant also notes that, as part of the development review process, the developer will be responsible for mitigating any operations deficiencies at the site access and along the project frontage based on a Traffic Impact Analysis (TIA). The City's concerns regarding weekend operations at the roundabout and along 27th Avenue can be addressed by requiring weekend analysis as part of the TIA.

Staff Response: Generally, the Public Works Design Standard requires weekday traffic analysis because that is the highest traffic volumes on the surrounding roadways. However, for retail, the highest traffic generation is on the weekend. Since the applicant is requesting a change to the Comprehensive Plan to 'Commercial', and the development sharing the same round-about is also commercial (Costco), and most of the traffic is focused on one roadway, studying weekend traffic operations is essential to determining whether the traffic facilities will function properly, Staff is concerned that the round-about and the Kuebler/27th Street intersection will not operate within City standards and result in excessive congestion.

- Staff raised concerns that the study did not consider lane utilization factors when determining queuing.

DKS responded that the Synchro software provides default factors for lane utilization that are based on the number of lanes and downstream traffic volume distribution and do not assume equal distribution among multiple lanes. Therefore, lane utilization factors were applied in the analysis.

Staff Response: The Synchro software considers full accessibility to the lanes. This may not be possible with some of the long queue lengths. This means more vehicles may be in a lane than anticipated by the model. This could result in even longer queues. The concern is that long queues back traffic into the round-about and then prohibit all movements within the round-about.

- Staff raised concerns about the study not showing westbound left turn queues from Kuebler to 27th Street. The study shows 900 left turn movements, which is a very high amount from a double turn lane.

DKS responded that the vehicle queuing analysis shows an average 95th percentile queue length of 600 feet. This would require extending the westbound left turn lanes another 175 feet into the existing taper on Kuebler Boulevard. The turn lane storage needs will be re-evaluated as part of the TIA submitted at the time of development review to ensure the proposed improvements accommodate anticipated queue lengths.

Staff Response: This amount of traffic results in greater delays (up to five minutes) for vehicles being able to make this turn, which does not meet City standards (delays less than 80 seconds). The proposed change to the Comprehensive Plan requires the applicant have the burden of proof to show the transportation system is not adversely impacted by the change.

- Staff raised concerns regarding the age of the counts and the uniqueness of the Costco development and that there is a high likelihood that the estimates may not represent actual traffic generation and distribution on the area roadways and intersections. This study builds on assumptions from a previous TIA (Costco); the poor operation of the intersections and access constraints to this site, shown in the TIA to operate beyond capacity, raises more questions about the accuracy of the study.

DKS responded that they have had many discussions with City staff have discussed this issue at length. City staff agree that DKS completed the TPR analysis using best practices and the best data that is available at this time, however, the City staff continue to have concerns with the inherent level of uncertainty of the results, but changes to the technical analysis or assumptions will not change the level of uncertainty. The only way to reduce the level of uncertainty in the TPR findings is to completely re-do the TPR study in mid to late 2022, after Costco has been open for a period of time, which is not a practical or reasonable request of the developer.

Staff Response: The burden of proof is on the applicant. The use of old counts and Costco assumptions does not alleviate staff concerns that the area intersections will not operate acceptably with the proposed Comprehensive Plan Change or Zone Change. Staff is not telling the applicant that they cannot submit an application or have it reviewed prior to Costco being completed. Instead, we are stating our concerns with the study itself and with the potential results for the streets and intersections in the area if the Comprehensive Plan map change request is approved.

- Staff raised concerns regarding the intersection capacity analysis, which shows shorter signal cycle time on Battle Creek/Boone Intersection in the future. Because this intersection is so close to Kuebler, timing used in the analysis needs to be coordinated to with surrounding intersections to minimize queuing impacts to each intersection. The applicant needs to show how the intersections will function as coordinated.

DKS responded that they updated the signal timing at the Battle Creek Rd/Boone Rd intersection to be coordinated with the signal at Battle Creek Rd/Kuebler Blvd, providing a 130 second cycle length. There was a slight improvement in the volume to capacity ratio and delay at the intersection due to the signal timing adjustments. The intersection continues to meet the City's Level of Service standard.

Staff Response: This data has not been provided to Staff for review and therefore, we cannot verify if this issue has been addressed.

- Staff raised concerns that the intersection of 27th/Kuebler, westbound left turning movement has delay of 278 seconds, northbound left turning movement has delay 294 seconds.

DKS responded with proposals such as double left round-about design and a vehicle queuing analysis which shows an average 95th percentile queue length of 600 feet. This would require extending the westbound lane turn lanes another 175 feet into the existing taper on Kuebler Boulevard.

Staff Response: The applicant's analysis shows a five-minute delay at the intersection; the City standards have a maximum 80 second delay. This does not represent an acceptable signal operation.

RECOMMENDATION:

Staff recommends that the Planning Commission close the Public Hearing and leave the record open. The record would be open for any public comments or response to the dates listed below:

- Record open for any new written testimony until December 28, 2021 at 5:00 p.m.
- Record open for rebuttal for all parties until January 4, 2021 at 5:00 p.m.
- Record open for the applicant's final written rebuttal until January 11, 2021 at 5:00 p.m.

The Planning Commission would set deliberations for January 11, 2021 at 5:30 p.m.

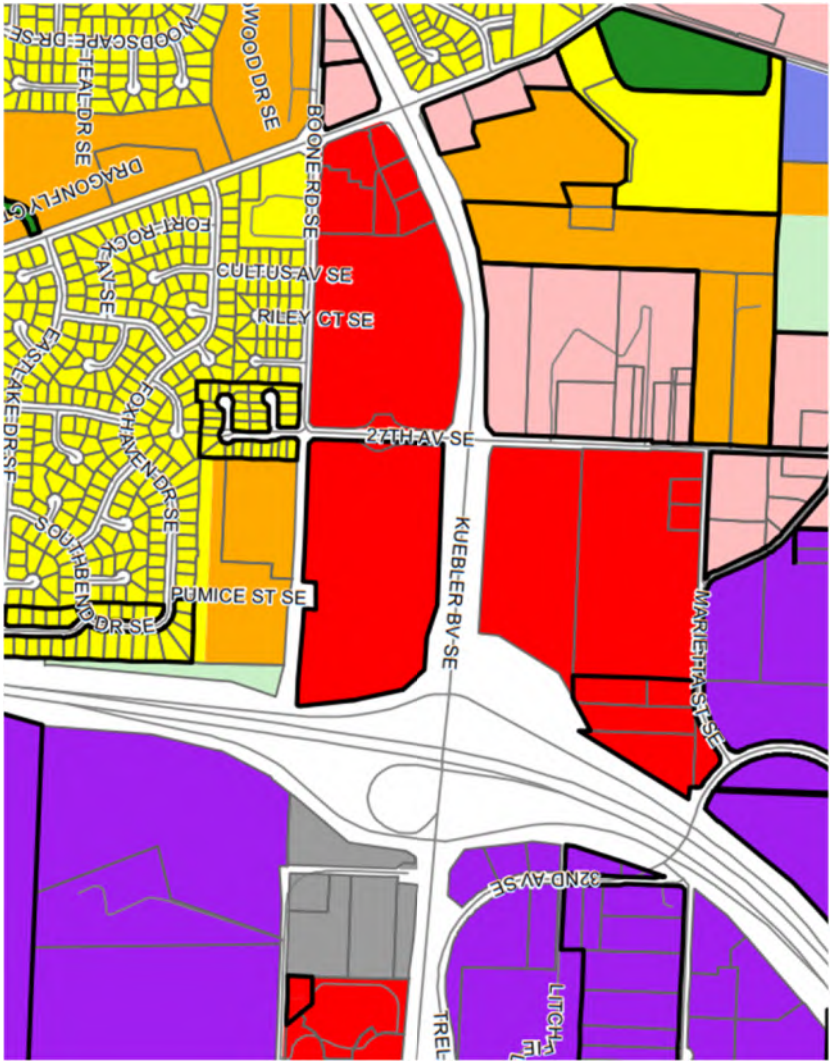
Alternative Option:

Adopt the facts and findings of the staff report and supplemental staff report and **DENY** Comprehensive Plan Map Change & Zone Change, Case No. 21.04.

Attachments: A. Our Salem Proposed Map
 B. DKS Associates Letter, dated
 C. Kellington Law Group, PC Letter, dated





















Prepared by Olivia Dias, Current Planning Manager

Comprehensive Plan Designation Proposed by Our Salem

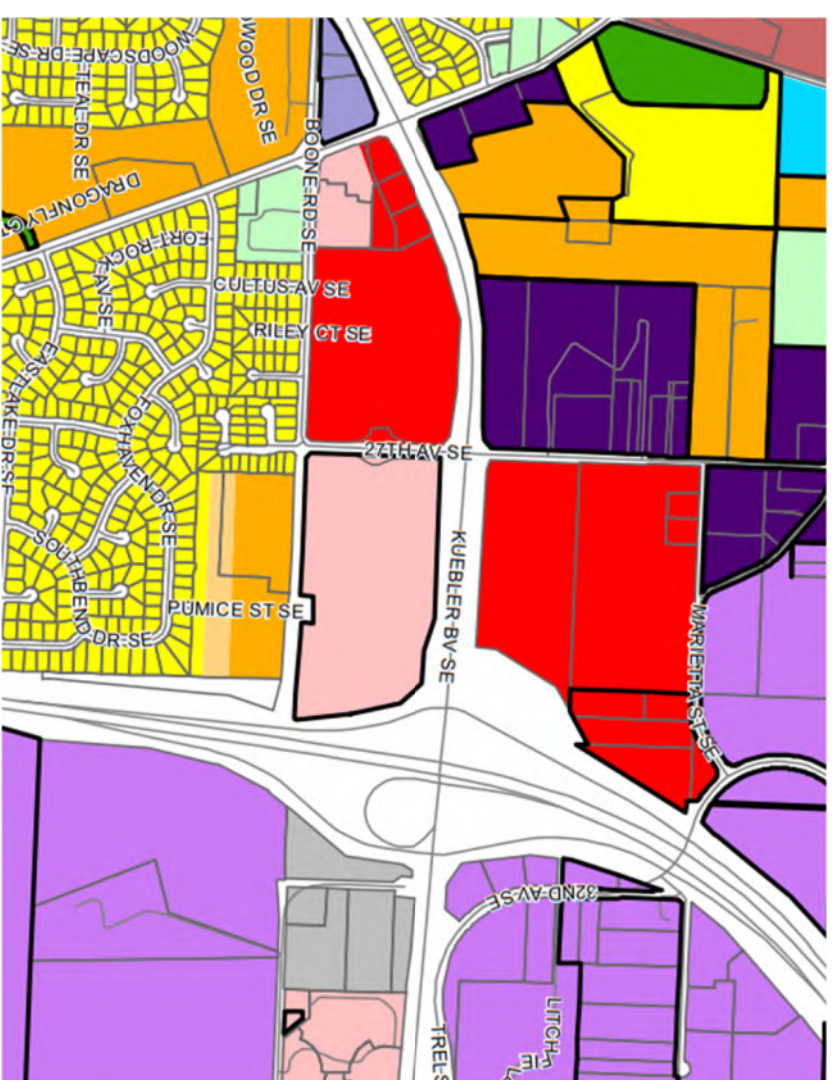


Key

Proposed Salem Comprehensive Plan Designation

	CB - Central Business District		EC - Employment Center
	COM - Commercial		FRM - Farm Resource Management
	CS - Community Service		IC - Industrial Commercial
	CSA - Community Service Airport		IND - Industrial
	CSC - Community Service Cemetery		MF - Multi-Family Residential
	CSE - Community Service Education		MU - Mixed Use
	CSG - Community Service Government		POS - Parks, Open Space, Outdoor Recreation
	CSH - Community Service Hospital		ROM - River Oriented Mixed Use
	CSS - Community Service Sewage and Solid Waste		SF - Single Family Residential
	DR - Developing Residential		Proposed Comprehensive Plan Change Areas

Zoning Proposed by Our Salem



Key

Proposed Salem Zoning Designation

CB - Central Business District	PA - Public Amusement
CG - General Commercial	PC - Public/Private Cemetery
CO - Commercial Office	PE - Public/Private Education
CR - Retail Commercial	PH - Public Health
EC - Employment Center	PM - Capitol Mall
EFU - Exclusive Farm Use	PS - Public Service
ESMU - Edgewater/Second Street Mixed-Use Corridor	RA - Residential Agriculture
FMU - Fairview Mixed-Use	RM1 - Multiple Family Residential 1
IBC - Industrial Business Campus	RM2 - Multiple Family Residential 2
IC - Industrial Commercial	RM3 - Multiple Family Residential 3
IG - General Industrial	RS - Single Family Residential
IP - Industrial Park	SMMU - South Waterfront Mixed Use
MU-I - Mixed Use-I	WSCB - West Salem Central Business District
MU-II - Mixed Use-II	
MU-III - Mixed Use-III	
MU-R - Mixed Use - Riverfront	
NH - Neighborhood Hub	
	Proposed Zoning Change Areas



DECEMBER 10, 2021

TO: OLIVIA DIAS, CITY OF SALEM PLANNING DIVISION

SUBJECT: RESPONSE TO CITY OF SALEM COMMENTS: BOONE ROAD COMMERCIAL TPR ANALYSIS (ROUND 2)

INTRODUCTION

DKS Associates prepared a Transportation Planning Rule (TPR) analysis for a proposed commercial development on a parcel bounded by Kuebler Boulevard, Boone Road, 27th Avenue, and I-5 in Salem, Oregon. The TPR Transportation Study was submitted to the City on August 20, 2021. On September 10, 2021, the City of Salem issued a notice of incomplete letter for the proposed Comprehensive Plan Map Change and Zone Change (AMANDA 21-115803-ZO NS 21-115805-ZO).

While the land use application has since been deemed complete, this letter addresses the following traffic-related concerns raised by City staff in a list provided to DKS on November 19th, 2021. DKS met with City Public Works staff on November 30th, 2021, to review the technical analysis and discuss each of the following items in detail. The City comments and DKS responses are provided below.

1. The City did not scope the project for this TIA; the City has concerns with the distribution of traffic.

DKS: DKS did scope the study intersections for TPR analysis on this property back in 2017. In subsequent attempts to scope the study, public works staff indicated they would not support a traffic study being completed. The study area is consistent with other TIA and TPR studies completed for developments in the immediate vicinity. The trip distribution used in the TPR analysis was based on the SKATS 2043 travel demand model and existing traffic patterns, and is consistent with other traffic studies for nearby developments. The City staff was in agreeance with these sources.

2. Proposed mitigation is for double left turn lanes and double right turn lanes for NB 27th at Kuebler. Need to show how that would be designed. It is unclear how the lanes would function coming off round-about and the site driveway.

DKS: Refer to Attachment A for a conceptual design layout showing the segment of 27th Street between Kuebler Blvd and the site access roundabout for the proposed mitigation. An updated cost estimate for the project is also provided in the attachment.

3. Provide preliminary design layouts for all mitigation outlined in TIA to ensure the cost estimates are valid. Designs should include identifying potential for private property impacts and geometric design problems.

DKS: Additional details for cost estimates and redline design layouts are provided in Attachment A.

4. Queuing analysis show lack of available storage for project queuing lengths. This will back traffic into the round-about and could cause the round-about to fail. Failure of the round-about will stop both directions of travel on 27th.

DKS: The TPR study shows that the proposal will not result in an increase in queue lengths compared to current zoning. Specific design details, such as storage lengths, should be based on queueing analysis conducted for a specific development plan in a Traffic Impact Analysis (TIA), not a TPR analysis based on hypothetical worst-case development.

5. The TIA focuses on weekday queuing needs. Commercial developments have higher weekend traffic generation. How will that affect queuing and signal operations on 27th?

DKS: The TPR criteria for a comprehensive plan change is strictly based on the planning horizon and analysis period in the City's Transportation System Plan (TSP), which is the weekday PM peak hour. The City Public Works Standards are consistent with the TPR and require "Traffic counts shall be collected on a Tuesday, Wednesday, or Thursday that is not a City, State, or Federal holiday, when K-12 school is in session." The TPR study adequately addresses these criteria by analyzing and mitigating for the weekday PM peak hour traffic operations. Weekend traffic analysis would have no influence on TPR findings. Furthermore, any weekend traffic analysis conducted at this point would need to rely on outdated historical traffic counts from 2017, which would introduce additional uncertainty into the analysis. It is important to note that, as part of the development review process, the developer will be responsible for mitigating any operations deficiencies at the site access and along the project frontage based on a Traffic Impact Analysis (TIA). The City's concerns regarding weekend operations at the roundabout and along 27th Avenue can be addressed by requiring weekend analysis as part of the TIA.

6. Did the study consider lane utilization factors when determining queuing?

DKS: The Synchro software provides default factors for lane utilization that are based on the number of lanes and downstream traffic volume distribution and do not assume equal distribution among multiple lanes. Therefore, lane utilization factors were applied in the analysis.

7. Proposal to add a second lane to the round-about. There is not enough weaving distance for the various movements, especially since the queues extend beyond the available lane lengths.

DKS: See the concept design in Attachment A. Two northbound lanes are provided as vehicles exit the roundabout. Guide signage on-site directing vehicles to select the desired lane prior to entering the roundabout will limit weaving within this segment.

8. Staff would like the intersection operation calculations to take into account the operation of other signals in the area, considering traffic progression and coordination between nearby intersections.

DKS: Signal coordination data (offsets, cycle lengths, phase splits, etc) was acquired from ODOT and City of Salem staff and incorporated into the intersection operations for this study.

9. Study does not show westbound left turn queues from Kuebler to 27th. 900 left turns are a very high amount from a double turn lane. Will left-turning vehicle back into through lanes?

DKS: The vehicle queuing analysis shows an average 95th percentile queue length of 600 feet. This would require extending the WBL turn lanes another 175 feet into the existing taper on Kuebler Boulevard. The turn lane storage needs will be re-evaluated as part of the TIA submitted at the time of development review to ensure the proposed improvements accommodate anticipated queue lengths.

10. The proposed configuration of westbound double left as 'protected permitted' is not appropriate for high-speed traffic.

This has been corrected to Protected only for the dual WBL at 27th Avenue.

11. While the TIA was done using best engineering practices, given the age of the counts and the uniqueness of the Costco development there is a high likelihood that the estimates may not represent actual traffic generation and distribution on the area roadways and intersections. Since this study builds on assumptions from a previous TIA (Costco) the poor operation of the intersections and access constraints to this site, shown in the TIA to operate beyond capacity, raises more questions about the accuracy of the study.

DKS and City staff have discussed this issue at length. City staff agree that DKS completed the TPR analysis using best practices and the best data that is available at this time. City staff continue to have concerns with the inherent level of uncertainty of the results, but changes to the technical analysis or assumptions will not change the level of uncertainty. The only way to reduce the level of uncertainty in the TPR findings is to completely re-do the TPR study in mid to late 2022, after Costco has been open for a period of time, which is not a practical or reasonable request of the developer.

12. Intersection capacity analysis shows future (2035) shorter signal cycle time on Battle Creek/Boone. Because this intersection is so close to Kuebler, timing used in the analysis needs to be coordinated to minimize queuing impacts to each intersection. Need to show how the intersections will function as coordinated.

DKS has updated the signal timing at the Battle Creek Rd/Boone Rd intersection to be coordinated with the signal at Battle Creek Rd/Kuebler Blvd (130 second cycle length). There was a slight improvement in v/c ratio and delay at the intersection due to the signal timing adjustments. The intersection continues to meet the City's LOS standard.

13. 27th/Kuebler – WB left has delay of 278 seconds, NB left turn has delay 294 seconds. How is site traffic going to weave over to left turn lane with projected amount of queue, demand and delay?

DKS: See responses to #4, #7, and #9.

14. Site is proposed to generate over 20,240 (total trips generated minus internal trips) trips all focused on a collector street; 27th Street. 11,966 trips are new to the area with 8,274 trips (pass-by trips) being diverted from the area. The site has no access to the north (Kuebler), east (I-5), and very little to the south (Boone which is a local street). All site traffic is focused on 27th. TIA shows very little traffic using Boone. Is that reasonable given congestion on 27th access?

DKS: The access to this parcel is limited and any development will primarily generate traffic onto 27th Avenue. The assumed distribution of trips is based on current and future estimates of travel patterns (see DKS response to #1). Over time, drivers will find the path of least resistance and will likely alter their travel patterns based on congestion levels. However, at this time, the assumed trip generation is a reasonable estimate of site generated traffic patterns.

15. Traffic volumes on Figure 3 don't match with Table 8.

DKS: This has been discussed with City Staff. The turning volumes in Figure 3 match the total trip generation in Table 8; the summary of Primary and Pass-by trips shown in the table near the bottom of Figure 3 is incorrect. A revised version of Figure 3 is in Attachment B.

16. Study is supposed to study the year of opening (2023?) and the end of the City's Transportation System Plan which is 2035. The TIA does the latter but not the former.

DKS: A TIA for development review would typically include a year of opening analysis. However, for a TPR-only evaluation, only analysis of the long-term planning horizon is required. At this stage, we only have a hypothetical reasonable worst-case development scenario and applying a "year of opening" would be arbitrary. Additionally, any year of opening operations results would be anecdotal as they have no implication on TPR-required mitigations. As discussed previously, once the applicant has a detailed development plan, a TIA will be prepared that provides year of opening transportation analysis. However, at this

point, before the appropriate plan designation and zoning is in place, it is not possible to know the details of a development plan or a year of opening.

17. The requested commercial retail (CR) zoning will have the same peak traffic times as that of the Costco site. CO zoning would generally have peak traffic at different times thus reducing the high traffic demand on 27th and on the area intersections. Staff may be more supportive of a redistribution of zoning types. Zoning such as Commercial Office (CO), Multi-Family, Residential and/or Mixed-Use may reduce the peak traffic times in relation to Commercial Retail (CR).

DKS: An alternate zoning that compliments or offsets the adjacent Costco property was discussed by DKS and the City. City staff indicated that a lower level of development intensity (such as mixed zoning) would be favorable in general, but any associated analysis completed at this time would include the same level of uncertainty (see comment and response #11), such that City Staff will not fully support any application on this property at this time.

18. Why are there no weekend intersection analysis? While weekday tends to be the highest traffic on the roadways, weekend trip generation is highest from retail. Since most of this site traffic is concentrated onto one roadway (27th) as is the Costco traffic, weekend analysis should be done.

DKS: See DKS response to Comment #5.

19. Proposing to fund a proportionate share of the costs (\$1.75 million) to mitigate Kuebler/Battle Creek, Kuebler/27th, Kuebler/I-5 SB ramps, Kuebler/36th. Only proposing to fully fund additional right turn lane at their site access to the roundabout on 27th. Providing proportionate share does not fully mitigate their impacts which is required by TPR. Their proposal is to fund a small portion of the \$5.25 million estimated to actually make these improvements. It is unknown how or when the City would have funding to construct their mitigation requirements.

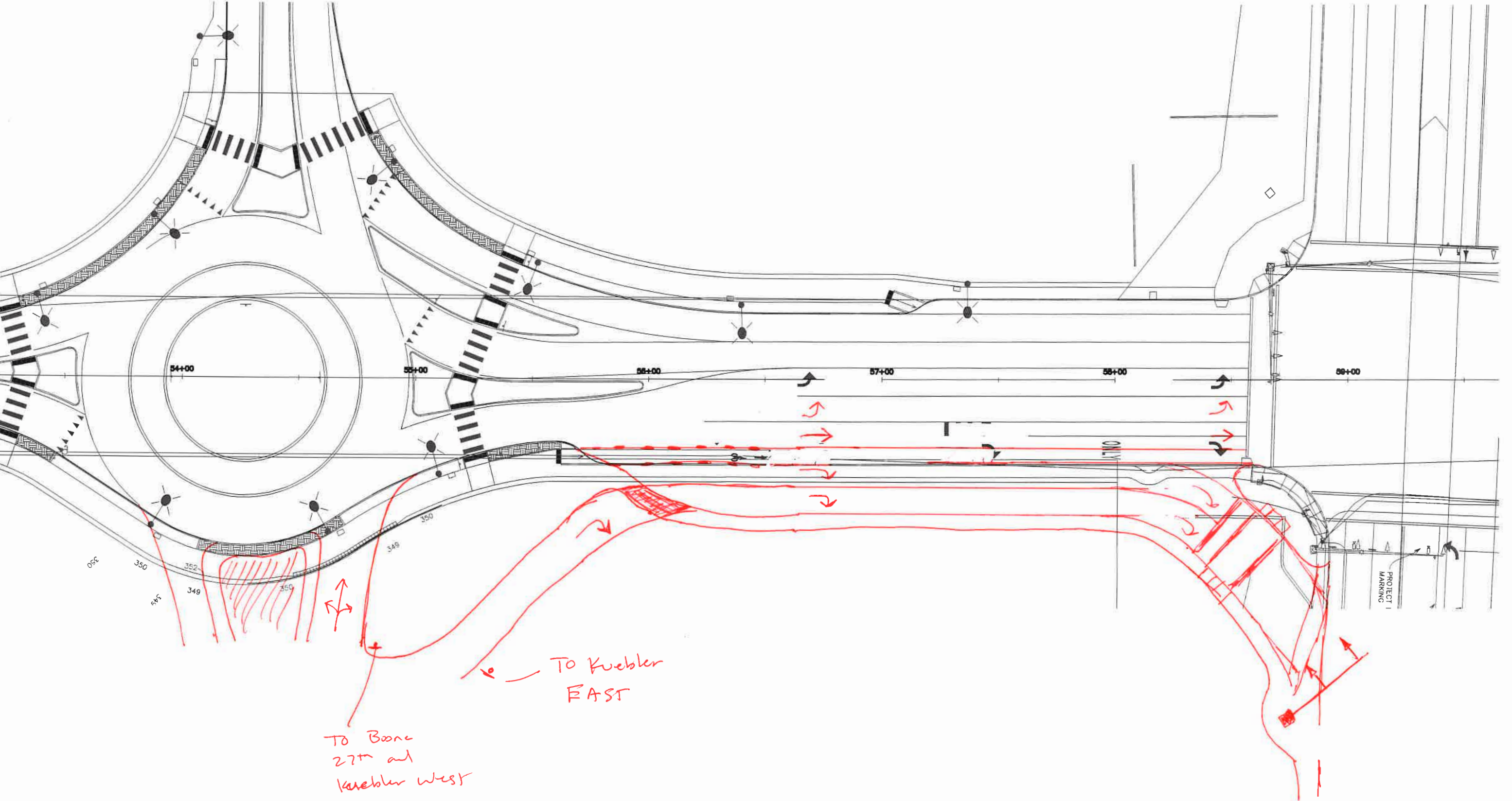
DKS: The developer is proposing to construct the full mitigations at Kuebler Blvd/Battle Creek Road, Kuebler Blvd/27th Ave, and 27th Ave/Site Access (roundabout), in addition to providing a proportionate share (cash contribution) of the costs of the improvements at Kuebler Blvd/36th Ave. The total investment the developer is currently offering is approximately \$3.6M, which is more than double their proportionate share.

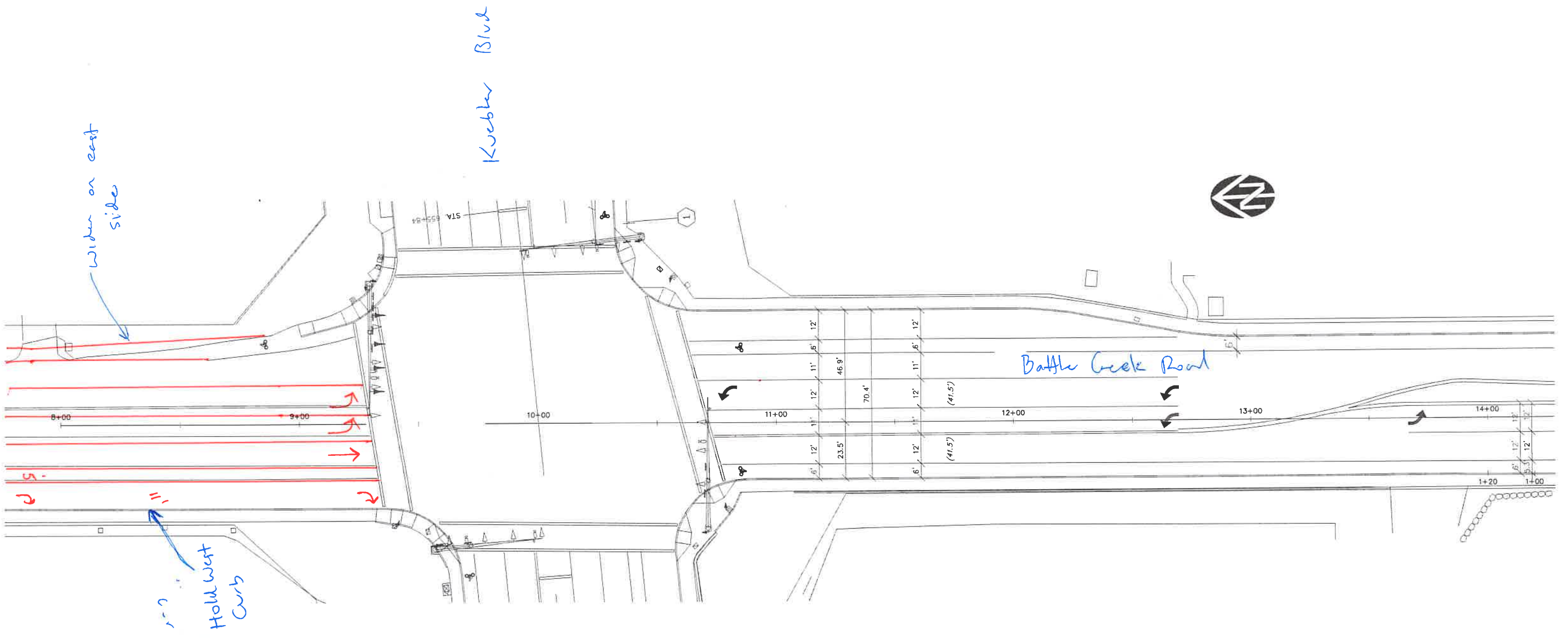
Attachments

- A. Concept Design Layout & Cost Estimate for 27th Avenue between Kuebler Blvd and Site Access
- B. Revised Figure 3 (Trip Generation & Distribution)



Note: Scale is 1" = 40'





Wider on east side

Kuebler Blvd

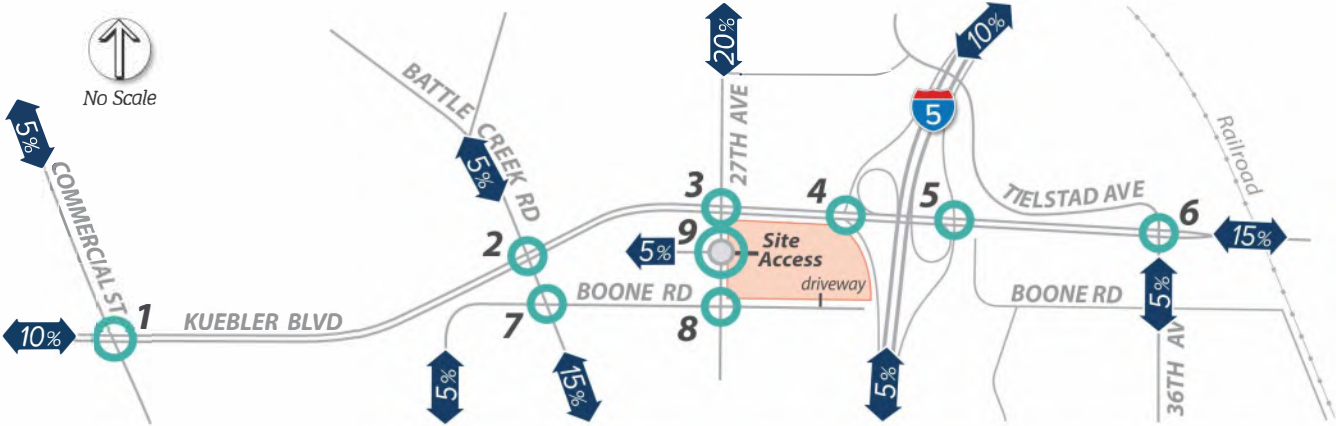
Bottle Creek Road

Hold West Curb

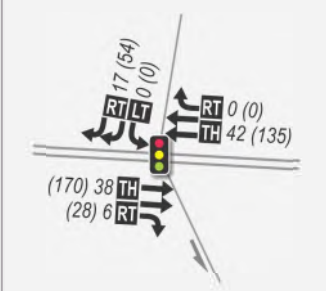


Planning Level Engineers Estimate

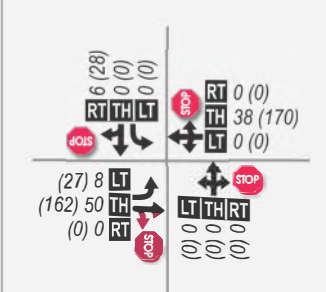
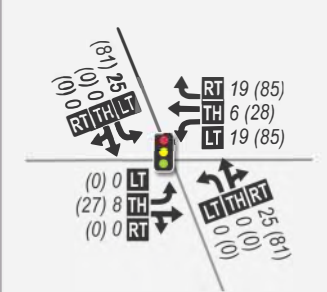
Item No.	Description	Estimated Quantity	Unit	Unit Price	Lump Sum Value
<u>Kuebler & Battle Creek - Install Second SBL</u>					
1.	Excavation & Demolition	ALL	L.S.	Lump Sum	\$250,000.00
2.	Baseroack, Paving & Concrete	ALL	L.S.	Lump Sum	\$500,000.00
3.	Retaining Walls	ALL	L.S.	Lump Sum	\$350,000.00
4.	Stormwater Improvements	ALL	L.S.	Lump Sum	\$100,000.00
Subtotal					\$1,200,000.00
<u>Kuebler Blvd & 27th - Dual NBR & NBL and Update Phasing</u>					
1.	Excavation & Demolition	ALL	L.S.	Lump Sum	\$200,000.00
2.	New ADA Ramps	ALL	L.S.	Lump Sum	\$35,000.00
3.	Baseroack, Paving & Concrete	ALL	L.S.	Lump Sum	\$800,000.00
4.	Retaining Walls	ALL	L.S.	Lump Sum	\$190,000.00
5.	Stormwater Improvements	ALL	L.S.	Lump Sum	\$175,000.00
6.	New Traffic Signal & Phasing	ALL	L.S.	Lump Sum	\$300,000.00
Subtotal					\$1,700,000.00
<u>Kuebler Blvd & 36th - Separate WBR Lane</u>					
1.	Excavation & Demolition	ALL	L.S.	Lump Sum	\$70,000.00
2.	New ADA Ramps	ALL	L.S.	Lump Sum	\$15,000.00
3.	Baseroack, Paving & Concrete	ALL	L.S.	Lump Sum	\$130,000.00
4.	Retaining Walls	ALL	L.S.	Lump Sum	\$60,000.00
5.	Guardrail	ALL	L.S.	Lump Sum	\$25,000.00
6.	Relocate Traffic Signal	ALL	L.S.	Lump Sum	\$200,000.00
Subtotal					\$500,000.00
<u>27th Ave & Site Access - Add WBR Lane to Roundabout</u>					
1.	Excavation & Demolition	ALL	L.S.	Lump Sum	\$150,000.00
2.	New ADA Ramps	ALL	L.S.	Lump Sum	\$35,000.00
3.	Baseroack, Paving & Concrete	ALL	L.S.	Lump Sum	\$365,000.00
4.	Retaining Walls	ALL	L.S.	Lump Sum	\$50,000.00
Subtotal					\$600,000.00
<u>Mitigation Cost Estimate</u>					
Kuebler & Battle Creek - Install Second SBL					\$1,200,000.00
Kuebler Blvd & 27th - Dual NBR & NBL and Update Phasing					\$1,700,000.00
Kuebler Blvd & 36th - Separate WBR Lane					\$500,000.00
27th Ave & Site Access - Add WBR Lane to Roundabout					\$600,000.00
TOTAL					\$4,000,000.00



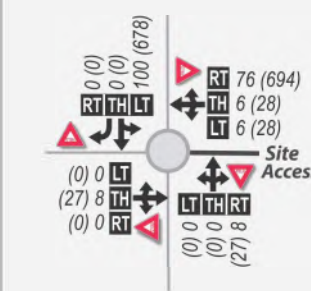
1. Kuebler Blvd. @ Commercial St. **2. Kuebler Blvd. @ Battle Creek Rd.** **3. Kuebler Blvd. @ 27th Ave.** **4. Kuebler Blvd. @ I-5 SB Ramps**



5. Kuebler Blvd. @ I-5 NB Ramps **6. Kuebler Blvd. @ 36th Ave.** **7. Battle Creek Rd. @ Boone Rd.** **8. 27th Ave. @ Boone Rd.**



9. Site Access @ 27th Ave. (Roundabout)



Current Zoning Trip Generation:	Proposed Zoning Trip Generation:
166 In 126 Out	Primary 540 In 566 Out
	Pass-By 354 In 354 Out

Study Intersection 0 Trip Distribution

Generated Trips

000 Current Zoning
(000) Proposed Zoning

← Lane Configuration
Volume Turn Movement

Stop Sign
Yield Sign
Traffic Signal



Wendie L. Kellington
P.O. Box 159
Lake Oswego Or
97034

Phone (503) 636-0069
Mobile (503) 804-0535
Facsimile (503) 636-0102
Email: wk@klgpc.com

December 10, 2021

Via Electronic Mail
City of Salem Planning Commission
C/O Olivia Dias, Current Planning Manager
City of Salem Community Development
555 Liberty ST SE
Salem OR 97301

RE: MINOR COMPREHENSIVE PLAN MAP AMENDMENT & ZONE CHANGE CASE
NO. CPC-ZC21-04; FOR PROPERTY LOCATED AT 2900 BLOCK OF KUEBLER BLVD SE
(AMANDA APPLICATION NO. 21-115803-ZO; 21-115805-ZO)

Dear Members of the Planning Commission:

This firm, together with Mark Shipman, represents the applicant for the above captioned matter. Please include this letter in the record of that matter. This letter is designed to update you on progress to date, current events and to answer questions that came up at the planning commission's November 2, 2021 hearing. We appreciate your patience in allowing us to work with city staff to understand and address their concerns. The applicant has also met with SGNA in an effort to understand and address their concerns.

City Concerns

The applicant appreciates the time taken by city staff to work through issues and identify areas of agreement and disagreement. As you know, planning staff found that the application met all relevant approval standards other than those related to Oregon's Transportation Planning Rule (TPR), which essentially requires that the applicant demonstrate that with the proposed plan amendment and zone change in place, the functional classification and performance of relevant transportation facilities will be no worse at the end of the 20-year planning horizon, than they would have been without the proposal. After meeting with staff, it became clear that there are several issues regarding transportation/traffic that are not in serious dispute:

- With the applicant's proposed transportation improvements, all relevant transportation facilities will function at the same LOS and v/c than they would function without the proposal. In some cases, they will function better. The one exception is Kuebler and 36th. That facility fails at the end of the planning horizon with or without the proposal and the ultimate solution (providing additional capacity for Kuebler Boulevard through traffic) requires a significant improvement to, or new bridge over, Mill Creek, which is the downstream bottleneck. The only reasonable mitigation at the intersection of Kuebler and 36th

is the installation of a westbound right-turn lane, and the developer has agreed to pay a proportionate share of that improvement.

- ODOT agrees that the DKS transportation/traffic analyses are sound, based upon best practices and ODOT does not ask for any additional mitigation than proposed.
- The methodologies, sources, data collection and analyses performed by DKS are appropriate, based upon best practices and the city Public Works Standards. In other words, there is no claim that DKS' work is the result of funny business.
- The City public works standards do not contemplate or allow weekend traffic hours to be used in the analysis, providing:

(1). Traffic counts shall be collected for both the AM (6:00-9:00 AM) and the PM (3:00-6:00 PM) peak.

(2). Traffic counts shall be collected on a Tuesday, Wednesday, or Thursday that is not a city, state or federal holiday, when K-12 school is in session.

- A trip count taken by the applicant in October, showed that there are fewer trips on the affected intersections on the Kuebler system, than estimated in the DKS counts and reports in the record. Because the October 2021 counts are so much lower, if the October 2021 count were used, the applicant could not be required to improve the intersection at Battle Creek and Kuebler, as they are offering to do in this proceeding.
- The applicant is willing to stick with their pre-pandemic counts and construct the Battle Creek / Kuebler intersection improvement already promised, regardless of the bullet above.
- The applicant's proposed transportation improvements are double their proportionate share.
- The city will be changing the plan designation and zone of the subject property to something economically beneficial - while the property was slated for CR (what the applicant seeks) under "Salem Futures," since the application was submitted, it is now apparently slated for CO under "Our Salem."
- The traffic associated with CO planning and zoning does not result in the relevant transportation facilities faring any better than they do under the proposed CR planning and zoning.
- The city has the chance to have necessary improvements at the relevant intersection performed at the developer's expense, rather than the city's if the

proposal is approved. If the developer is denied, the city will be required to establish transportation system adequacy for the uses permitted in the CO zone.

- The applicant answered all of public works' questions about the traffic analysis and the proposed mitigation improvements and provided requested schematics to show the applicant's work.
- The city council approved the Costco counts finding them accurate and credible, 29 times in the Costco approval. No one doubts that the Costco counts are accurate or credible.
- When Costco initially opens in March or April of 2022 and for some period of months after, traffic to the Costco site will be unusually high. This is always the case with the opening of a new store.
- Taking counts when Costco opens and for some number of months thereafter is inconsistent with best practices, because the counts during that initial period are well-known to be irregular (akin to holiday counts) and not be reflective of normal operations.
- If the applicant were required to wait to submit its application until after Costco counts can reasonably be taken to be reliable, the applicant would be delayed somewhere between nine-months to a year from now.

There should be no area of disagreement, that:

- There are significant costs to carry the subject property, making it reasonably important to the applicant to get a positive revenue stream from developing the property, as soon as possible.
- The area of Salem where the subject property is located has a shortage of commercial facilities to serve the population there.
- State law (ORS 197.520) provides that "no city" is allowed to "adopt a moratorium" on "land development" without first holding a hearing about imposing a moratorium and writing findings that justify it. The justification has to explain that there is a real problem, that (1) the city's regulations are inadequate to prevent the harm, (2) is the moratorium is limited so residential and commercial development is not "unreasonably restricted by the adoption of the moratorium." (3) alternatives to the moratorium are "unsatisfactory", (4) the harm caused by the moratorium, including shifting needed commercial and residential development to other jurisdictions, is outweighed by the harm of not imposing the moratorium, and (5) that the city has the resources to solve the problem within 120 days of the moratorium being declared. ORS 197.520(3)(a)

and (4). One six-month extension can be granted on findings that the city is making progressive on solving the problem causing the problem.

- The demand that the developer wait a year for Costco normative counts is a moratorium without bothering to follow the state law requirements for doing so.

The only area of disagreement is that the city wants the applicant to wait until after Costco opens sometime in March or perhaps April, which in order to get normative counts means no counts can be taken for somewhere between 9 months to a year from now and the applicant simply cannot do that.

SGNA

The applicant very much appreciated the chance to work with SGNA on this application. It appears that SGNA's concerns are they do not want another "big box" (i.e. store larger than 70,000 sq ft) in the area and had concerns about drive-through windows. The applicant does not intend a "big box" that SGNA worries about so that concern may be resolvable if we can otherwise come up with a global resolution. However, the drive-through window concern will be hard to accommodate given the new COVID world where consumers expect to drive through stores/pharmacies/banks/restaurants rather than doing pretty much anything in-person. The applicant hopes to continue to dialogue with SGNA and gain their support.

Issues Raised at the Nov 2 Hearing

There was concern about whether the applicant met the "better than or equal to" standard for a plan amendment. The easy answer is that the applicant need not meet the "better than or equal to" standard. SRC 64.025(e)(2)(A) requires that the Minor Plan Amendment be justified based on the existence of one of the following:

- (i) Alteration in Circumstances;
- (ii) Equally or Better Suited Designation; or
- (iii) Conflict between the Comp Plan Map Designation and the Zoning Designation.

See pg. 6 of the Staff Report.

The applicant explained in its application materials, and staff agreed, that the request met both (i) and (ii). See pg. 7 of the Staff Report. There is no dispute that there has been an alteration in circumstances in the area and so regardless of the (ii) standard, the applicant meets at least one of those standards - clearly (i).

There was a concern about climate change. There is no approval standard that makes climate change relevant to this application and, as a technical matter, approval or denial is supposed to be based upon the standards and criteria in the city's code. ORS 227.173(1). However, the applicant understands this issue is important and points out here that there should

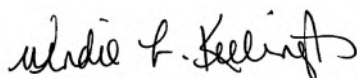
be no dispute that there is a serious unmet need for commercial uses (retail, office) in this part of the city. There is also a significant amount of housing in this area. In the absence of places where people can walk or drive less to get the goods and services that they need, such as by approval of the proposal, they will be forced to drive greater distances to get what they need. Part of the solution to climate change is providing goods and services in proximity to the people who need them.

With respect to traffic, DKS submitted a supplemental memorandum with supporting attachments today that responds to specific city concerns that were raised in an email memorandum that framed our post-hearing discussions with staff. It answers the specific staff questions that were presented.

Conclusion

It is our sincere hope that you will agree that the applicant has demonstrated that the proposal meets all relevant approval standards. So far as we know, we have done so. The only outstanding issue is whether the applicant should be denied because they must wait to submit their application until such time as Costco opens and traffic therefrom normalizes. However, it is respectfully submitted that denial on that basis is not allowed under either the city code or state law. And, in fact and as a matter of law, there really should be no dispute on that point. Approval is the appropriate course and the city can be confident that approval of the project means that relevant transportation facilities will function no worse than they would without the proposal and in some cases better; the city will get a pleasant commercial center that is needed for this part of the city; and critical transportation infrastructure that is needed regardless will be paid for by the developer, rather than the city. Thank you for your consideration.

Very truly yours,



Wendie L. Kellington

WLK:wlk

CC: Client
Mark Shipman, Esq.
Lacy Brown, DKS



NEIGHBORHOOD ASSOCIATION
555 LIBERTY ST. SE RM. 305 SALEM OR 97301 • 503-588-6207 • WWW.CITYOFSALEM.NET/NEIGHBOR

September 17, 2021

Re: 21-115803-ZO

City Staff:

At the March meeting of the South Gateway Neighborhood Association, Jeremy Shoenfelder of Mosaic Development and Andy Harmon of Steele Associates showed a preliminary proposal for the development of land on the East side of 27th Ave .SE to the South of Kuebler Blvd. They said they were in the early stages of design and had no tenants yet but wanted to work with the community on development. We were told they wanted some upscale mixed use that might include medical offices, restaurants, walkable spaces and senior living facilities all of which would be compatible to the senior living development to the south. One of the questions they were asked was why they wanted to change the zone from RA to Retail Commercial rather than Mixed Use-I or Mixed Use-II. The answer was that, while they didn't have any prospective tenants yet, CR would allow for more possibilities.

After further investigation, and comparing permitted uses allowed in the various zoning classifications, we have been unable to find any uses that would be permitted under the CR designation but not under MU that would be desirable in this neighborhood.

The Mixed-Use zone designation did not yet exist when the adjacent properties were rezoned to CR so there were no other options at the time. This resulted in a major conflict within the neighborhood after the developer gave verbal promises which were not memorialized as conditions for approval. This is one of the reasons the Mixed-Use designation would be much more desirable in this area which is surrounded by residential and church properties.

Therefore, unless the developer can give some specific examples of a use that requires the CR designation, the South Gateway Neighborhood Association is strongly opposed to rezoning the property to CR. This is an area that already has traffic problems and will have even more with the advent of the Costco site across 27th Ave. and another proposed shopping development on the on the north side of Kuebler Blvd. In addition, the allowance of any kind of drive-through business, which would be allowed under CR but not under MU-I or MU-II, would exacerbate the traffic problems and would be an undesirable use on this property.

Thank you for your consideration of our comments.

Michael Hughes

SGNA Land-use co-chair



NEIGHBORHOOD ASSOCIATION
555 LIBERTY ST. SE RM. 305 SALEM OR 97301 • 503-588-6207 • WWW.CITYOFSALEM.NET/NEIGHBOR

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Thank you for your consideration of our comments.

Michael Hughes

SGNA Land-use co-chair



Morningside Neighborhood Association

September 25, 2021

City of Salem
Planning Division
555 Liberty Street SE
Salem, OR 97301

Land Use Action Case No. CPC-ZC21-04

Attention: Olivia Dias, City of Salem Planning Division

The Morningside Neighborhood Association is opposed to the requested change to the Comprehensive Plan Map designation for this property along Kuebler Boulevard SE to “Commercial” with CR (Retail Commercial) zoning. Our concern is with the impact this change will have on traffic in the area.

This property is located in the SE quadrant of the 27th Avenue SE and Kuebler Road SE intersection. The SW quadrant is the home of the Salem Clinic and the new Costco retail store and fuel station. The NE quadrant has already been zoned to allow commercial development and a large shopping center has been proposed for this area.

Kuebler Road SE was upgraded years ago as a condition of the zone change for the SW quadrant and 27th Avenue SE is being upgraded in conjunction with the construction of the Costco facilities. There was no provision for further retail growth in the immediate area.

Any commercial development in the SE quadrant will add significant traffic to Kuebler Road SE and 27th Avenue SE as well as Boone Road SE. It will also negatively impact the Kuebler Road SE bridge over I-5 and may impact the I-5 on and off ramps (ala Woodburn).

The Morningside Neighborhood Association requests that this zoning change request be rejected. We do not need three of the four quadrants at this intersection to be devoted to Retail Commercial development and we definitely don’t need the traffic complications that would result from this.

Morningside Neighborhood Association

Submitted for the Morningside Association Board

Pamela Schmidling, Chair

Morningside Neighborhood Assoc.
555 Liberty St SE Room 305
Salem, OR 97301

P - (503) 588-6207

W - MorningSideNA.org

E – MNAShared1@Gmail.com

Olivia Dias

From: Howard Strobel <hkstrobel@gmail.com>
Sent: Tuesday, November 2, 2021 2:39 PM
To: Olivia Dias
Subject: CPC-ZC21-04

My comments for the above Case Number for a Comprehensive Plan Map Amendment and Zone Change for property located at 2900 block of Kuebler Blvd are intended for the Planning Commission at their meeting on November 2, 2021.

I urge the Planning Commission to deny the applicant's request for Comprehensive Plan Map change from Developing Residential and to change zoning from RA (Residential Agriculture) to CR (Retail Commercial).

Among the reasons for my belief that denial is reasonable is that the request does not meet many of the standards set by SRC 64.025 (e)(2)(A). Chiefly, among them is that the "Alterations of Circumstances" of the nearby vicinity, including social and demographic patterns, has not changed to the extent to the point where the current designation is no longer appropriate. Admittedly, there has been some "creep" in adjacent property, i.e. Costco (Pacific West Property), the Commission should not permit additional changes in order to maintain the character and livability of Southeast Salem.

The commission does not have enough detailed information from the applicant to make such a major shift in land use in the vicinity. The Retail Commercial designation will affect a far larger area of Southeast Salem than those residents than those who own property within 250 feet of the subject property who were notified of the requested change. I believe that a detailed written plan for the development of the subject property

is needed for the Commission to make a responsible decision to allow the map and zone change. Without it, there is a high potential, if approved, will negatively affect the entire Southeast Salem area. The proposed changes are not an equal to or a better suited designation than the existing designation.

I believe that a designation that will allow limited small development consistent with the local neighborhood such as a MU zone is a significant improvement over the requested designation.

Thank you for your consideration of my comments.

Sincerely,
Howard Strobel
5985 Darcy St SE
Salem,OR
503-949-5224

Olivia Dias

From: lmgb@earthlink.net
Sent: Sunday, October 24, 2021 3:45 PM
To: Olivia Dias
Subject: Zone Change Case No. CPC-ZC21-04 Planning Commission Comments
Attachments: Drft2 Letter for 0 Kuebler Blvd (1).pdf

To the Planning Commission:

An application for rezoning the property at Kuebler and 27th from Residential/Agricultural to Commercial-Retail is up for your approval. The South Gateway Neighborhood Association submitted a letter of opposition (see attached) to the application.

We are also against this application:

- 1) The developer failed to add conditions to their application to the uses expressed in their original concept design that indicated that the property would include mixed uses (medical offices, residential, etc.) versus pure commercial uses.
- 2) The mixed use zone designation would match the uses expressed by the developer in their original concept design. Going with Mixed-Use would also prevent the developer from promising a mixed-use development then switching to a big-box store as was done on the Costco property, which was rezoned as Commercial-Retail. Fool us once PacTrust/Costco) shame on them, fool us twice—how stupid can we get?

Lora Meisner & Glenn Baly
1347 Spyglass Court SE
Salem, OR 97306
503-588-6924

Olivia Dias

From: Jake <jakekrishnan@gmail.com>
Sent: Tuesday, November 2, 2021 1:52 AM
To: SGuizar@citofsalem.net; Olivia Dias
Subject: Testimony for City Council meeting Nov 2 - ZONE CHANGE CASE NO. CPC-ZC21-04 - PROPERTY LOCATED AT 2900 BLOCK OF KUEBLER BLVD SE
Attachments: Jake K Letter to City ZONE CHANGE CASE NO. CPC-ZC21-04_ 2900 BLOCK OF KUEBLER BLVD SE.docx

Hi Shelby, Olivia

I'm attaching my written testimony, objecting to the Zone change application in the case CPC-ZC21-04 - PROPERTY LOCATED AT 2900 BLOCK OF KUEBLER BLVD SE
Please include it as testimony to be considered by the council before a decision is made. I would request the council to DENY the application for a CR zone change.

Have a wonderful day.

thanks

Best Regards
Jake Krishnan

Jake K

Salem OR 97306

Nov 1, 2021

The Salem City Council

Salem, OR

Dear City Councilors

Public hearing: Nov 2, 2021 – Testimony submittal

Subject: **MINOR COMPREHENSIVE PLAN MAP AMENDMENT & ZONE CHANGE CASE NO. CPC-ZC21-04; FOR PROPERTY LOCATED AT 2900 BLOCK OF KUEBLER BLVD SE (AMANDA APPLICATION NO. 21-115803-ZO; 21-115805-ZO)**

I wanted to provide my inputs on the application, to reinforce why this re-zoning application should be denied.

a. When the proposed development was brought to the South Gateway Neighborhood association meeting, we had asked about the reason for seeking a zone change from RA (Residential Agriculture) to CR (Retail Commercial). However, the spokespersons for the applicants could not explain satisfactorily why they desire a designation of 'CR' instead of 'MU' (Mixed Use), when the intended build out is really Mixed Use.

As a resident of Salem, residing within the jurisdiction of the South Gateway Neighborhood Association, I strongly believe it is important for proposed zone changes to be an accurate representation of the intended use, without obfuscating the real development being planned. The community has already gone through an intense conflict in the decision surrounding PacTrust proposed Costco development where the expressed intent by the developer was completely different from what ultimately got approved. The community felt terribly betrayed by the actions of the developer and we would like to prevent any future recurrence of this type of situation. As a member of the community, I would like to ensure there's accountability for what the developer indicates in their original plan.

The developer's indicated that they were in the early stages of design and had no tenants yet but wanted to work with the community on development. We were told they wanted some upscale mixed use that might include medical offices, restaurants, walkable spaces and senior living facilities all of which would be compatible to the senior living development to the south. All these can be developed within a Mixed Use zone rather than a CR zone. All the proposed usages can be successfully done within the Mixed Use category and there's no proven or demonstrated need for CR.

b. A CR zoning carries the risk of huge increase of traffic, that cannot be sustainably borne by the current infrastructure. As residents and collective stakeholders of the city of Salem, we need to ensure development is accompanied by the ability of the city to manage the corresponding increase in traffic. In this neighborhood, Costco will already increase traffic dramatically, more than what the access roads leading to I-5 and Commercial street can bear. We have not seen appropriate traffic mitigation measures that will take care of the increased traffic. Adding more commercial establishments in the vicinity of the proposed Costco development will make this a nightmare for

residents and visitors and ultimately, make it an unattractive destination. Let us not jeopardize the long-term viability of the neighborhood due to short term considerations.

Due to the above reasons, I strongly exhort the City Council to DENY the application to rezone the said property to 'CR'.

Thanks

Jake K

Salem, OR

Olivia Dias

From: Kyle Scott <knute45@aol.com>
Sent: Monday, October 25, 2021 2:35 PM
To: Olivia Dias
Cc: glennbaly12345@gmail.com
Subject: Opposition to Kuebler & 27th Rezoning Application (CPC-ZC21-04)

Dear Ms. Dias,

I have lived in Salem for the past 25 years and was part of the efforts to stop Costco from being built at Kuebler & 27th. As we all know, the leadership of the City of Salem once again put filling the cities coffers before the well being of its citizens. I live at the top of Foxhaven Dr. and use to have a nice view of green hills and cows. Now, I have a lovely view of the entire roof line of the new Costco building and I have the Mayor and the Salem City Council to thank for that. Our city leaders have failed the citizens of South Salem with the approval of the Costco development, and I don't hold much hope that they will see the huge mistake in allowing more commercial developments to be placed in this area.

Our once quiet and lovely neighborhoods are being overtaken by greedy developers and the poor decisions of our spineless Mayor and Salem City Council. I completely agree with Glen Baly and the South Gateway Neighborhood Association position on this new zoning proposal for the east side of Kuebler and 27th. It is a terrible idea to rezone this property for commercial use. Traffic is already bad and will soon be worse with the opening of Costco. It will be complete grid lock if more commercial developments are allowed to be built. Kuebler is the only northbound access to I-5 for all South Salem residents from River Rd to the interstate. Putting more commercial developments at the mouth of the Kuebler- I-5 interchange is like putting a cork in a bottle.

I strongly oppose the zoning changes to commercial use on the east side of Kuebler and 27th. For once, please listen to the citizen's who live in the surrounding neighborhoods and who will be effected by any poor decisions made by our city leaders. Our city leaders are prostituting themselves and our neighborhoods lured by the enticement of big development money. It's time for Salem city leadership to start making decisions, which will enhance the lives of its citizen's and not sell us out for a few pieces of silver.

Please feel free to contact me if you have any questions.

Sincerely,

Kyle Scott
Citizen of South Salem

Olivia Dias

From: SUZI NERLI <mbsstudio@gmail.com>
Sent: Sunday, October 24, 2021 7:58 PM
To: Olivia Dias
Subject: Re: 21-115803-ZO response

RE: 21-115803-ZO

Council Members,

I live in Boone Wood Estates and submit this letter in complete opposition to the proposed rezoning of the property on the east side of 27th Ave SE and to the south of Kuebler Blvd. from MU to CR.

The area does NOT need another shopping area nor commercial space. With the upcoming Costco being built (much to the resident's numerous objections) across 27th, more commercial business, including additional potential "Big Box" stores will create greater traffic problems, higher risks to pedestrians and cyclists, increased noise and light pollution, increased crime including vandalism, ongoing disruption of local wildlife. Additionally, there will be added time delay for emergency vehicles as well as add to current resident's travel times.

Although the council did not take into consideration the resident's numerous oppositions to the development of Costco (with the exception of Councilmember Leung) and appear to be more interested in serving corporate interests not the city residents, I request that the Council reexamine their loyalties and vote to keep this property zoned MU

Thank you,

Suzi Nerli
mbsstudio@gmail.com

Olivia Dias

From: Kathryn Chambers <abbykats@hotmail.com>
Sent: Sunday, October 24, 2021 4:42 PM
To: Olivia Dias
Cc: citycouncil
Subject: Kuebler and 27th Rezoning (CPC-ZC21-04)

The citizens of Salem object to the proposed rezoning of the property at 27th and Kuebler. You as our representatives have the chance to prevent the debacle of the Costco development where the developers promised a mixed use development and then acted in extreme bad faith by switching to a big box store.

The developers request for rezoning to a Retail Commercial designation would open the door to another big box store bringing with it additional traffic congestion and other related problems.

The mixed use zone designation would match the uses expressed by the developer in their original concept design.

Going with Mixed-Use zoning would also prevent the developer from promising a mixed-use development then switching to a big-box store as was done on the Costco property, which was rezoned as Commercial-Retail.

Please make sure this time, the rezoning reflects community values and the “livability” that Salem leaders so regularly espouse and that developers are held to their proposals.

Sincerely,
Kathryn Chambers
Member South Gateway Neighborhood Association



RESPONSE TO REQUEST FOR COMMENTS

DATE: Wednesday, October 13, 2021

CASE/APP NUMBER: CPC-ZC21-04 / 21-115803-ZO / 21-115805-ZO

PROPERTY LOCATION: 2900 Block of Kuebler Blvd SE

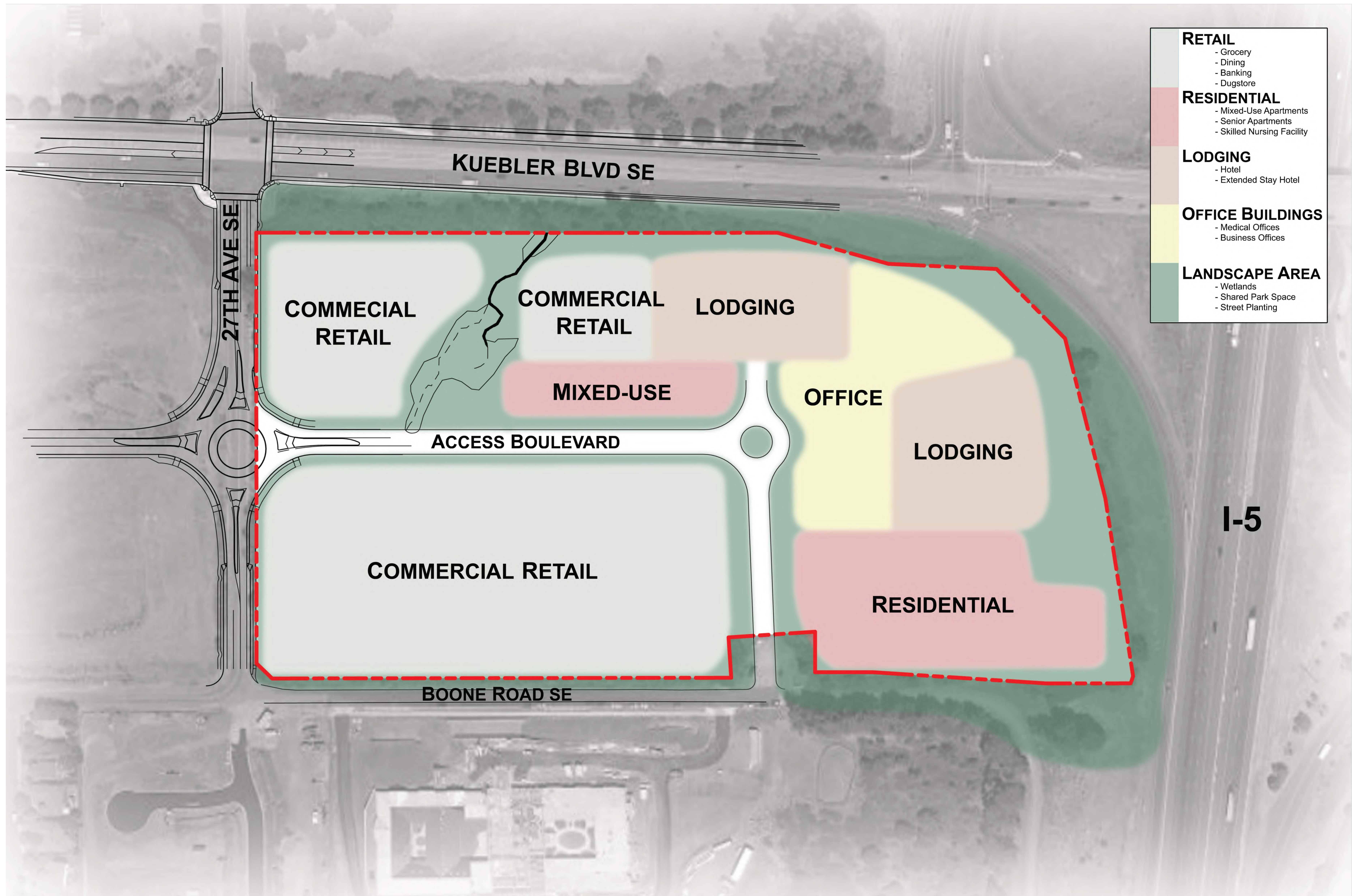
CASE MANAGER: Olivia Dias, Current Planning Manager, City of Salem

Email: odias@cityofsalem.net

COMMENTS FROM: Jolynn Franke, Transit Planner I, Cherriots

Email: planning@cherriots.org

COMMENTS: Cherriots was contacted by a developer regarding this property in June of this year. This developer was very interested in accommodating public transit and Cherriots was very interested in serving this development. The conceptual site plan included with this response was provided to Cherriots by the developer. It shows a new roadway through the development connecting at Boone Rd and 27th Ave with a roundabout at the apex. Cherriots conversations with the developer consisted of adding a bus stop pair on this new road near Boone Rd, south of the roundabout. Regardless of whether this application has been submitted by that same developer or not, Cherriots is still very interested in providing service with bus stops at this location.



Kuebler Village Conceptual Site Plan

03.05.2021

Olivia Dias

From: FRICKE Daniel L <Daniel.L.FRICKE@odot.oregon.gov>
Sent: Thursday, March 3, 2022 8:44 PM
To: Kevin Hottmann; Olivia Dias
Subject: RE: ODOT Letter Regarding a Rezone of Property at Kuebler/I5

Kevin/Olivia –

At Kevin's request, I have reviewed the TIA prepared for the subject comprehensive plan amendment and zone change for property located on the southeast corner of Kuebler Boulevard and 27th Street. The following comments are provided as supplement to the previous comments from ODOT that were submitted to the TIA preparer and included in the record prepared by the applicant.

The TIA analyzed two Kuebler Boulevard intersections with ODOT facilities: I-5 Northbound Ramp Terminal and I-5 Southbound Ramp Terminal. The study indicates that the northbound ramp terminal is currently operating below the Oregon Highway Plan (OHP) mobility target and will continue to do so in the future analysis year under the current zoning designations and the proposed zoning. The southbound ramp terminal also operates below the mobility target in the current condition but is projected to exceed the target for both existing and proposed zoning in the future. In this case, OHP Action 1F.5 states that when the mobility target, *"... is projected to be above the mobility targets at the planning horizon, and transportation improvements are not planned within the planning horizon to bring performance to the established target, the mobility target is to avoid further degradation."* The measured operations at the southbound ramp terminal described in the TIA (expressed as a volume/capacity ratio) are as follows:

OHP Mobility Target	0.85
Existing Condition	0.69
Future Year-Current Zoning	0.90
Future Year-Proposed Zoning	0.93

In compliance with the OHP as described above, the mobility target to be achieved is 0.90. With the proposed zoning the target is exceeded in the future year. However, Action 1F.5 also states, *"After negotiating reasonable levels of mitigation for actions required under OAR 660-012-0060, ODOT considers calculated values for v/c ratios that are within 0.03 of the adopted target in the OHP to be considered in compliance with the target."* As noted in our previous correspondence, the TIA recommended (and ODOT concurred) mitigation at the southbound ramp terminal that would meet the OHP mobility target, however, ODOT Region 2 did not support the proposed improvements. The analysis result above reflect system operations without improvements at the southbound ramp terminal.

Based on the above and consistent with Oregon Highway Plan Action 1F.5, we consider the operations at the southbound ramp terminal, as projected for the proposed zoning, to be in compliance with the mobility target. This comment should not be interpreted as expressing an opinion, either for or against, on the land use actions before the city. This e-mail should be considered comments of the Oregon Department of Transportation on the subject project and should be included in the hearing record as ODOT testimony.

Dan Fricke, Senior Transportation Planner
ODOT Region 2 Tech Center
455 Airport Road SE, Building A
Salem, OR 97301-5397
Ph: 503-507-0391
E-mail: daniel.l.fricke@odot.oregon.gov

From: Kevin Hottmann <KHottmann@cityofsalem.net>
Sent: Tuesday, February 22, 2022 4:28 PM

To: FRICKE Daniel L <Daniel.L.FRICKE@odot.oregon.gov>

Subject: ODOT Letter Regarding a Rezone of Property at Kuebler/15

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

Hi Dan,

Attached is a letter response regarding a comp plan zone change for a property at the southeast corner of 27th and Kuebler. I had talked to Dorothy in the past about this letter. She told me it should have come from you (Planning) not TPAU. This letter is confusing to me and am wondering if you agree with the letter.

Thanks

Kevin Hottmann, P.E.

City Traffic Engineer

City of Salem | Public Works Department

555 Liberty St SE, Suite 325, Salem OR 97301-3513

khottmann@cityofsalem.net | 503-588-6211

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Morningside Neighborhood Association

March 14, 2022

Mayor & City Councilors
City of Salem
555 Liberty Street SE
Salem, OR 97301

Land Use Action Case No. CPC-ZC21-04

Attention: Olivia Dias, City of Salem Planning Division

The Morningside Neighborhood Association remains opposed to the requested change to the Comprehensive Plan Map designation for this property along Kuebler Boulevard SE to “Commercial” with CR (Retail Commercial) zoning. Our concern is with the impact this change will have on traffic in the area.

This property is located in the SE quadrant of the 27th Avenue SE and Kuebler Road SE intersection. The SW quadrant is the home of the Salem Clinic and the new Costco retail store and fuel station. The NE quadrant has already been zoned to allow commercial development and a large shopping center has been proposed for this area.

Kuebler Road SE was upgraded years ago as a condition of the zone change for the SW quadrant and 27th Avenue SE has been upgraded in conjunction with the construction of the Costco facilities. There was no provision for further retail growth in the immediate area.

Any commercial development in the SE quadrant will add significant traffic to Kuebler Road SE and 27th Avenue SE as well as Boone Road SE. It will also negatively impact the Kuebler Road SE bridge over I-5 and may impact the I-5 on and off ramps (ala Woodburn).

Although several conditions have been added as a condition of approval, the Morningside Neighborhood Association requests that this zoning change be rejected. We do not need three of the four quadrants at this intersection to be devoted to Retail Commercial development and we definitely don't need the traffic complications that would result from this.

Submitted for the Morningside Association Board

Pamela Schmidling, Chair

Morningside Neighborhood Assoc.
555 Liberty St SE Room 305
Salem, OR 97301

P - (503) 588-6207

W - MorningSideNA.org

E - MNAShared1@Gmail.com

NEWS

Were trees illegally removed in South Salem to make way for a 'Kuebler Station'?

**Whitney Woodworth**

Salem Statesman Journal

Published 2:10 p.m. PT Feb. 24, 2022 | Updated 4:30 p.m. PT Feb. 24, 2022

A Salem-based tree service and a well-known developer were two of the parties fined \$138,187 for illegally removing 120 trees on a vacant parcel of land near 27th Avenue and Kuebler Boulevard SE.

The land is tied to a possible "Kuebler Station" retail project — one of the many large developments slated for the South Salem area.

The city issued the fine on Jan. 27 but required a formal public records request from the Statesman Journal to produce the names of those fined.

Documents provided as a result of that request show the city fined developer Chuck Sides, Willamette Tree Service and the owners of the property at 2792 Marietta St. SE for cutting down 48 protected Oregon white oaks along with 72 other trees, including black walnut, maple and Douglas fir trees.

Chuck Sides has been involved in dozens of regional development projects, including Keizer Station.

On his company website, Sides lists his involvement in developing a 53-acre retail center at Interstate 5 and Kuebler. Prior renderings of the proposed project showed

it hoped to attract a mix of big box, mid-sized and smaller stores — similar to Keizer Station.

Marion County property records tied the owners of the site, Kathy Clark, Kenneth Clark, Kimberly Clark-Chaffey and Carol Plain, to a Bellevue, Washington, address. It appears to have been in the Clark family for decades.

Sides declined to comment on the removal of the trees but said he was appealing the fine with the city. He directed further questions to his attorney.

In the notice of appeal, Sides' attorney Jason Thompson said the fine was not applicable because Sides did not violate Salem's tree preservation code and was entitled to the exceptions of the code outlined in city law.

That section of city code cites various exceptions that would allow for tree removal, including having a certain lot size, only removing a certain percent of trees or when the "removal of Oregon white oaks where the removal is necessary in connection with construction of a commercial or industrial facility," according to Salem Revised Code.

According to the city's notice of civil penalty, the property did not meet these exceptions because it was too big, too many trees were removed and a tree conservation plan or tree variance for the removal of the Oregon white oaks was not granted.

Willamette Tree Service did not immediately respond to a request for comment. Attempts to reach the property owners were unsuccessful.

Investigating the tree removal

Following public concern and questions from the Statesman Journal, staff in December began investigating the felled trees.

Read more: City issues fine over the removal of more than 100 trees from a south Salem property

According to an affidavit submitted in Salem Municipal Court, a code officer visited the property and spotted several Oregon white oaks that appeared to have been cut down by a chainsaw.

City ordinances require city approval prior to removing some trees on private property, depending on the number, size and type of tree.

The removal of Oregon white oaks, a tree protected by law, requires a permit and tree conservation plan.

The officer was unable to reach Sides or the property owners. He posted several "stop work" orders at the site, which threatened penalties if the removal of trees continued.

Sides, the property owners and Willamette Tree Service are required to pay the fine by the end of February.

They will be required to plant new trees that are equal in value to the trees removed.

But neighbors and tree advocates say the punishment is a slap on the wrist compared to the millions of dollars developers stand to make on the property. Some are calling for bigger fines and better enforcement from the city.

Building a 'Kuebler Station'?

Officials told the Statesman Journal in December a permit application for the tree removal was neither submitted nor approved by Salem's planning department.

The property is zoned for commercial use.

No site plan permits or building permits have been filed for the location but members said Sides and another developer approached the Morningside Neighborhood Association several years ago with plans for a "Kuebler Station" — a large, 250,000-square-foot retail center.

The zoning of the site to commercial retail was approved by the city, but several years passed without any development activity on the property.

Geoffrey James, land use chair for the Morningside Neighborhood Association, said neighbors alerted the city to the unlawful removal of the trees.

Weeks later, he said he read about the "hopelessly inadequate fines" in the paper.

"There seems to be no incentive to prevent this," James said. "The developer is now free to develop a treeless meadow, without having to deal with the 'Significant Tree' Ordinance and all those permits and protections."

The intersection of Kuebler Boulevard and 27th Avenue has become a lightning rod in the battle over development, tree preservation and neighborhood concerns.

The soon-to-be-opened Costco Wholesale on a property kitty-corner to the site where the trees were removed drew sharp criticism from neighbors for the traffic impact and tree destruction that the development would bring.

A move from developers with Kuebler Cascade View LLC to change the zoning on the 24-acre property of the southeast corner of Kuebler Boulevard and 27th Avenue from residential to commercial retail received pushback from neighbors due to the potential traffic problems and the threat of having another large retail development at the intersection.

According to city documents, developers submitted a conceptual plan for commercial retail, lodging, mixed-use, office and residential uses on the property across the street from Costco and potential Kuebler Station property.

An appeal from the South Gateway Neighborhood Association asked Salem City Council to reject this zoning change in early February. Council is set to hold a hearing on the matter at a later date.

Calls for more enforcement

There was some public speculation in December that the tree removal may have been fueled by proposed changes to Salem's tree laws, which expanded restrictions on tree removal and preservation during the development process.

City Council approved the changes in January. After a second reading in February, the rules are in the middle of a 30-day waiting period before they become official.

Michael Slater, a commissioner with the Salem Planning Commission and a tree advocate, said the city is much better at holding developers accountable for illegally removing trees than they were a few years ago.

According to city records, the \$138,187 fine is the biggest fine for tree removal in at least five years.

But some big fines will only go so far, Slater said.

The city planning department does not have a dedicated arborist and instead relies on the urban tree crews, whose focus is on the tens of thousands of public trees in Salem.

"They just do not have the resources to go out and effectively enforce this," Slater said. "There are a lot of routine violations that go unenforced and unpunished, and I think that is because of lack of staff."

He proposed hiring a compliance arborist in the planning department funded by fines like the one given for the Marietta Street tree removal.

"We passed a new ordinance," Slater said. "We've had a lot of interest in protecting trees. We know how important they are for climate change now. We just need to get our enforcement mechanism up and running."

Mature Oregon white oaks are between 50 to 129 feet tall and may live 500 years. Oak savannas once covered the Willamette Valley and provided habitat for birds and the threatened western gray squirrel. Now, an estimated 99% of the savannas and prairies have been replaced by farmland and development.

James said the council needs to take action to stop developers from clear-cutting trees without serious consequences.

"There are no longer any significant trees," he said. "They are lying on their sides — so sad. It is simply outrageous."

For questions, comments and news tips, email reporter Whitney Woodworth at wmwoodworth@statesmanjournal.com, call 503-910-6616 or follow on Twitter @wmwoodworth.